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THE STUDENT'S GUIDE

TO

PRIDEAUX'S CONVEYANCING

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THE STUDENT'S GUIDE

TO

PRIDEAUX'S CONVEYANCING,

COMPRISING

NOTES THEREON;

TOGETHER WITH

A SET OF TEST QUESTIONS

AND AN

EPITOME OF THE VENDORS' AND PURCHASERS' ACT, 1874;
THE CONVEYANCING ACTS, 1881 & 1882;
THE SETTLED LAND ACTS, 1882 & 1884;
THE MARRIED WOMEN'S PROPERTY ACTS, 1882 & 1884;
AND THE AGRICULTURAL HOLDINGS ACT, 1883.

BY

JOHN INDERMAUR,

SOLICITOR,

Author of "Principles of Common Law," "Manual of Practic ," "Epitomes of Leading Cases," "A Concise Treatise on the Law of Bills of Sale," "The Student's Guide to Bankruptcy," &c., &c.

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PREFACE TO SECOND EDITION.

THE fact that in less than two years a large edition of this little work has been nearly run through, shews me that I was not mistaken in my idea that it would be well received by students. The publication of a new (13th) edition of Prideaux has determined me to at once publish a new edition of this Guide, that students may have the "notes" on the last edition. These "notes" I have in various places corrected and improved, without appreciably adding to their bulk, their very virtue consisting in their brevity. I have revised the Epitome of the Acts given in the former edition, and made some addition to the notes at the end of each, and have added three further Acts, viz. :—"The Agricultural Holdings Act, 1883," "The Settled Land Act, 1884," and "The Married Women's Property Act, 1884." The Test Questions, though requiring little amendment, have been generally revised and slightly added to. I have also, in this edition, added a brief index.

J. I.

22, CHANCERY LANE,
March, 1885.

PREFACE TO FIRST EDITION.

THE substance of this small work is, to a great extent, a reproduction of matter I have already published in the *Law Students' Journal*, with revisions and additions; the Test Questions are, however, entirely new. The various Acts of Parliament relating to Conveyancing which have been passed of late years, render the subject of Practical Conveyancing one calling for the student's special attention even more than formerly, and the dissertations in "Prideaux's Conveyancing" being most valuable to students, my notes on the work and the questions thereon have been written mainly as an encouragement to more to study them. These notes are interleaved for the student to be able conveniently to add to them. The Epitome of Statutes will be found useful as a short way of running through their provisions, and also for reference in reading the Notes. The number of the *Law Students' Journal* containing my Epitome of the Conveyancing Act, 1881, has long been out of print, which is, in itself pretty good evidence of the special appreciation of its contents.

J. I.

22, CHANCERY LANE.
May, 1883.

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ERRATUM.—On page 10, 8th line from top, read "vendor" instead of "purchaser."

THE STUDENT'S GUIDE

TO

PRIDEAUX'S CONVEYANCING.

[*With regard to the references given throughout to "Prideaux" the edition referred to is the last at the present date, viz., the* 13*th, published in January,* 1885.]

VOLUME I.

CONDITIONS OF SALE.

Root of Title.—Go through the deeds, and select some instrument of reasonable age—not necessarily 40 years—and stipulate that that shall be commencement of title. Note that since Conveyancing Act, 1881, sec. 3 (3), if there is such a stipulation the purchaser cannot call for any prior document, so that, for instance, if the deed commencing the title was one executing a power of appointment, the purchaser cannot now call for the instrument conferring the power. But, notwithstanding this, if purchaser can show a serious defect in prior title, he will not be precluded from doing so. Also, it appears, that an admission to copyholds is not a proper commencement of title without the surrender, on which the admittance is grounded. (See Vol. 1., p. 140.)

Defects, or Doubts on Title.—A general condition that no defect of title shall enable purchaser to avoid sale will not be effective. The only satisfactory course is to state clearly

in the conditions the defect or doubt, and specifically pro vide that purchaser shall make no objection on account thereof.

Conditions will not be construed to relieve the vendor from the liability of verifying the abstract by proper evidence, unless expressed in plain and unambiguous language to that effect.

Specially as to Leaseholds.—On open contract, purchaser always entitled to original lease and 40 years preceding sale (see Frend v. Buckley, L. R., 5, Q. B., 243), but if lease not granted so long, then he cannot go into lessor's title. (Vendors' & Purchasers' Act, 1874, sec. 2; Conveyancing Act, 1881, secs. 3, 4.)

Note, however, the extraordinary decision in the recent case of Patman v. Harland (17 Ch. D., 353), that as it has always been the duty of a purchaser to require a reasonable title, if he gets only a very short one, and a reasonable one that would have given him notice of any defect or restrictive covenant, he will still be deemed to have purchased with notice. (See Vol. I., p. 505, and the very reasonable foot-note, as follows: "It seems a strange doctrine that a purchaser is to be deemed guilty of negligence for not negativing the operation of an Act of Parliament.")

If part of property comprised in one lease is put up for sale, purchaser must be made aware of its being part only, for otherwise he might object, on the ground that he may be liable to eviction under condition of re-entry, on breach of covenants respecting remainder of property.

If property held under an underlease, this must be stated, otherwise purchaser may be liable on the conditions, covenants, &c., in the original lease. This, however, will not be so if the conditions and covenants in the original and the underlease are identical. (Note here, however, the case of Camberwell, &c., Society v. Holloway, 13 Ch. D., 754; 49 L. J., Ch., 361; 28 W. R., 222.)

As to what purchaser is to assume now on production of last receipt for rent, see Conveyancing Act, 1881, sec. 3 (4, 5), but this enactment will not prevent a purchaser showing that there has in fact been a breach of covenant.

As to length of title in some particular cases on an open contract.

(1.) *Tithes.*—Commence with original grant from Crown, and then deduce title for 40 years prior to sale.

(2.) *Enfranchised Copyholds.*—Note Conveyancing Act, 1881, sec. 3 (2), under which a purchaser has not now any right to call for the title to make the enfranchisement. Formerly he was entitled to call for the production not only of the copy hold title, but also of the title of the Lord of the Manor down to the period of the enfranchisement, unless indeed the enfranchisement was under the Copyhold Acts, which must be carefully distinguished.

(3.) *Allotments.*—Deduce title to property in respect of which allotment made down to award, and then to allotment. The allotment is freehold, copyhold, or leasehold, according to the tenure of the land in respect of which it is made.

(4.) *Exchanges.*—Note common law rule that it was necessary not only to show title to land sold, but also to land given in exchange, but not so now, because exchange no longer implies any condition of re-entry (8 & 9 Vict., c. 106, sec. 4.) Observe specially the difference between the position under an ordinary exchange, and an exchange under General Enclosure Act, 1845 (8 & 9 Vict., c. 118, sec. 147), they being two utterly distinct things.

Incumbrances on Land.—State them clearly on face of conditions, and if it is proposed to give further an indemnity, state that clearly also, giving the nature and terms of the indemnity. Note on this subject the convenient provision of sec. 5 of the Conveyancing Act, 1881.

Identification of Parcels.—Learn form of ordinary condition, and remember that its effect is that the deeds shall show identity, so that if they do not, a good title is not made out.

Conditions for delivery of requisitions within a given time.—This ordinary condition only applies from the delivery of a perfect abstract, that is an abstract which sets out with sufficient fulness every instrument which forms part of the vendor's title, and states every material fact. This condition will not be binding when the title is manifestly bad on the face of the abstract, *e.g.*, where vendor is a trustee and the time for sale has not arrived.

Condition giving Vendor liberty to annul sale on account of objections taken.—Notwithstanding this condition, if any requisition is made, vendor is bound to give the best answer he can to it, and it is then for the purchaser to say whether he will accept such title as the vendor can give him. Note that if vendor expresses his willingness to remove objections, or enters into correspondence with that view, the right of rescinding is waived unless in the condition is inserted the words "notwithstanding any attempt to remove the same."

The vendor cannot avail himself of this condition in a case in which he fails to show any title at all. (Bowman v. Hyland, 8 Ch. D., 588; 47 L. J., Ch., 581.)

If sale goes off, purchaser has a lien on the estate for amount of his deposit.

Completion of purchase.—Time is only of essence of contract where so stipulated for, or after reasonable notice, or if it appears so intended from nature of property, *e.g.*, a life estate, an annuity, short leaseholds, &c.

If nothing said as to interest, purchaser must pay it from day fixed for completion, from which date he gets the rents and profits. He can prevent payment of interest by giving notice that money lying idle. This has no application where

condition is that if not completed from whatever cause purchaser shall pay interest, for here he will always have to pay interest unless delay occasioned by wilful neglect or misconduct of vendor. (See, however, hereon, the recent case of *In re* Gold & Norton's Contract, *Weekly Notes*, 1885, p. 6; *Law Students' Journal*, Feb., 1885, p. 22.)

Deeds not handed over.—Purchaser entitled to copies at his own expense (Conveyancing Act, 1881, sec 3 (6). If vendor, a beneficial owner, he is bound to give purchaser acknowledgment and undertaking under Conveyancing Act, 1881 (sec. 9); but if he is a trustee it is doubtful whether he is bound to give more than an acknowledgment.

Misdescription.—Look at form of ordinary condition. Remember that it is not an absolutely precluding condition, but applies only to such errors as in the absence of condition would vitiate the contract.

If vendor can show that purchaser knew the real quantity of the property, and therefore was not deceived by the misdescription, he is not entitled to compensation.

Where quantity described as "thereabouts" or "more or less" or "by estimation," these words only cover a small difference. If the discrepancy is very great it is impossible to relieve vendor from imputation of wilful fraud, or such other neglect of his duty as a vendor, as will practically amount to fraud.

Vague and indefinite representations with respect to the property, in what is but matter of opinion, do not entitle purchaser to compensation.

Look at and get up some instances of cases in which purchaser has, on account of misdescription, been held to be entitled to compensation (Vol. I., pp. 26, 27), and cases in which he has been held entitled to rescind (Vol. I., pp. 28-30).

It is doubtful whether condition that no person bidding

shall retract his bid, is binding.* As to reserved bidding note 30 and 31 Vict. c. 48.

Even in the absence of condition to that effect, a purchaser failing to complete, forfeits his deposit.

Trustees must not insert unnecessarily stringent conditions; on the other hand, they will be liable if the conditions are too loose, and loss or expense is occasioned thereby. (As to the effect of unnecessarily depreciatory conditions by trustees, see the recent case of Dunn v. Flood, in the Court of Appeal, 78, L. T., 226; *Law Students' Journal,* Feb., 1885, p. 21.)

If property registered under Land Transfer Act, 1875, *with an absolute title,* no special condition as to title is necessary.

Points on title (not being questions affecting the validity of the contract), may be summarily dealt with by a Judge at Chambers under section 9 of the Vendors' and Purchasers' Act, 1874, but note that specific performance cannot be decreed hereunder.

AGREEMENTS.

A grant of a right to shoot is an interest in land within 4th sec. of Statute of Frauds. (Webber v. Lee, 9 Q. B. D., 315; 51 L. J., Q. B., 485; 30 W. R., 866.)

Vendor's name must be stated in contract, unless he is otherwise sufficiently described. (Potter v. Duffield, L. R., 18 Eq. 4; 43 L. J., Ch., 472.) The expression "trustees selling under a power of sale" is a sufficient description. (Catling v. King, 5 Ch. D., 660; 46 L. J., Ch., 384). So also is the expression "proprietor." (Rossiter v. Miller, 3 Appeal Cases, 1124; 48 L. J., Ch., 10.)

In a contract for a lease, it is necessary, in order to satisfy the Statute of Frauds, that the time for its commencement should be mentioned, there being no inference

* I think it clearly is not. If no such condition, it seems to me that undoubtedly a bidder can withdraw, until the auctioneer's hammer falls.

that the term is to commence from the date of the agreement, in the absence of language pointing to that conclusion. (Marshall v. Burridge, 19 Ch. D., 233; 51 L. J., Ch., 329; 30 W. R., 93.)

An agreement is binding, though it may contain a clause that a more formal contract is to be prepared by a solicitor. (Fowle v. Freeman, 9 Ves., 351.) But, if an offer is made, and it is accepted, subject to such a provision, then it is a condition, and there is no agreement independent of that stipulation. (Winn v. Bull, 7 Ch. D., 29; 47 L. J., Ch., 139.) It seems that the acceptance of an offer, subject to the title being approved by the purchaser's solicitor, does not prevent the contract being considered as complete. (Hussey v. Horne—Payne, 4 App. Cas. 311.)

A notice to treat given by a railway company does not in every sense constitute a contract; but, nevertheless, the relation of vendor and purchaser is to some extent established, so that the particular lands which the company are to take, and the landowner to give up, are fixed, and neither party can get rid of the obligation—the one to take and the other to give up their lands. This, however, is all, and it is only as soon as the price has been fixed that the relation of the parties as vendor and purchaser is as fully constituted as in the case of a formal and regular agreement, so that, for instance, conversion would take place.

Note the case of Rayner v. Preston (18 Ch. D., 1; 50 L. J., Ch., 472; 29 W. R., 546), that a purchaser has no right to the benefit of his vendor's insurance-money.* If, however, the insurance company, in ignorance of the sale, pay to the vendor on a fire happening, they can recover the money back again from him if the purchase money is paid to him in full. (Castellain v. Preston, 11 Q. B. D., 380.)

* But it would appear that he would be a person interested under 14 George III., c. 78, and if the money has not been paid over by the insurance company, he may require it to be laid out in rebuilding. (See hereon, Vol. II., p. 13, and note (*q*) on that page.)

Time when Vendor must have a Title.– At any time before chief clerk's certificate in a specific performance action, unless, indeed, he entered into contract knowing he had no right to sell, in which case, he cannot better his position by afterwards acquiring a title.

Doubtful Title.—Practically in most cases, there cannot be such a thing now, as on any objection to title it has been decided that the court is bound to ascertain and determine what the law is, and to take that to be the law that it has so ascertained and determined. If, however, the point turns on the construction of some ill-expressed instrument, on which opinions may well differ, and all necessary parties are not before the court, it may be considered doubtful, and the court will not compel a purchaser to complete. A Court of Appeal, whose opinion is in favour of a title, will not treat it as doubtful merely because the inferior court has taken a different view and decided against it. (Alexander v. Mills, L. R., 6 Ch., 131).

Note that the taking possession by a purchaser does not necessarily in itself amount to an acceptance of title, for it is always a question depending on the circumstances whether the conduct of the purchaser is inconsistent with an intention to call for the title or to insist on objections to it. If, however, there are to a purchaser's knowledge irremovable defects and yet he takes possession, this is always a waiver of those defects. (Re Gloag and Miller's contract, 23 Ch. D., 320; 52 L. J., Ch. 654.)

As to the measure of damages on breach of contract for sale, note case of Flureau v. Thornhill (2 Bl. Rep., 1078). Where land is devised to A and then contracted by the testator to be sold, and the testator dies before completion, yet A will not get the purchase money, for the contract to sell revokes the prior devise and the purchase money will pass under the will as part of testator's personal estate.

As to a person contracting to sell and then dying before completion, note sec. 4 of Conveyancing Act, 1881.

ABSTRACTS.

Though purchaser not entitled to go beyond time fixed by law or stipulated for commencement of title, he will be entitled to have earlier deeds handed over to him on completion.

Where land conveyed to trustees for sale it is not now necessary to abstract any separate deed declaring trusts of proceeds, notwithstanding the provisions of the Settled Land Act, 1882, sec. 63. This is by reason of the 6th sec. of the Settled Land Act, 1884. Note and compare the two provisions referred to, as also the case of Taylor v. Poncia (25 Ch. D., 646) as to the proper construction of the 63rd section of the Settled Land Act, 1882.

Verification of Abstract—

Will.—Probate or office copy.

Fine.—Chirograph, or exemplification, or examined copy.

Recovery.—Exemplification or examined copy.

Bankruptcy Proceedings.—Certified copies.

Redemption of Land Tax.—Certificate of Commissioners with receipt of cashier of Bank of England and memorandum of registration.

Intestacy.—Letters of administration.

Partial Intestacy.—Probate and showing that property did not pass under will.

Instruments executed under Power of Attorney.—Note Conveyancing Act, 1881, secs. 46 and 47, and Conveyancing Act, 1882, secs. 8 and 9.

Advowsons.—Note that the rules laid down by sec. 2 of Vendors' and Purchasers' Act, 1874, do not apply to advowsons.

Presumptions.—Encroachment made by a tenant are deemed to be for landlord's benefit, unless it can be shown that tenant made same for his own benefit, *e.g.*, where he has fenced it separately.

Strips of land next to a public highway, presumed to belong to owner of adjoining enclosed land and not to lord of manor.

INCUMBRANCES.

Requisitions as to—Need not be answered by purchaser. (*In re* Ford & Hill, 10 Ch. D., 365; 48 L. J., Ch., 327.)

Middlesex Registry.—Memorials of wills to be registered within six months after death, but if death took place abroad, within three years of death.

As to effect of non-registration, note Vendors' and Purchasers' Act, 1874, sec. 8.

An assignment of a legacy charged on land in Middlesex requires no registration.

As leases not exceeding 21 years do not require registration neither do assignments thereof.

Land registered under Land Transfer Act, 1875, does not require registration in local register.

Yorkshire Registry.—Note the Act of 1884 (47 & 48 Vict., c. 54) and consider its provisions, particularly observing that under it every assurance is to have priority according to the date of registration, and that the possession of the legal estate is not to confer any benefits contrary to this.

Judgments.—Note different statutes as to the law of judgments as affecting land, commencing with Statute of Westminster and concluding with 27 and 28 Vict., c. 112.

Under 27 & 28 Vict., c. 112, judgment creditor who has seized lands in execution under an elegit, may obtain an order for sale of his debtor's interest therein.

Equity of Redemption.—Though this cannot be seized under an elegit, yet equitable execution can be obtained by the

appointment of a receiver, and this is in all respects equivalent to an elegit at law.*

Judgments will not bind lands, as against purchasers, &c., unless registered in local registry, nor will they bind by registration in local registry alone.

Administration of Assets of Deceased Persons.—Judgments recovered against deceased will only have priority if registered or re-registered within five years of death.†

Crown Debts.—These only bind when of record, and, provided they are duly registered and re-registered, nor since 28 & 29 Vict., c. 104, sec. 48, do they affect lands as against purchasers, &c., unless writ of extent issued and registered.

Lis Pendens.—It must be a pending suit, and not one that has been concluded. Must be registered and re-registered.

Whilst an administration suit is pending, trustees under a testamentary power of sale cannot make a good title to real estate without leave of the court, but it is otherwise as to executor or administrator dealing with personalty, unless receiver has been appointed.

A purchaser not justified in refusing to complete merely because *lis pendens* registered. He must enquire as to whether the action is sustainable.

* Note that a receiver may be appointed on interlocutory application in the action in which the judgment was obtained, without the necessity of institution of separate proceedings for the purpose in equity, as was formerly the case. (Smith v. Cowell, 6 Q. B. D., 75; 50 L. J., Q. B., 38; 29 W. R., 227; Salt v. Cooper, 16 Ch. D., 544; 50 L. J., Ch., 529; 29 W. R. 553); and hereon observe now the provisions of the New Rules of October, 1884 (Order L., rule 15a), providing that on applications for appointment of a receiver by way of equitable execution, the court or judge shall consider (1) the amount of the debt claimed; (2) the sum probably recoverable by the receiver; and (3) the probable costs of his appointment, and may direct enquiries as to these and other matters before giving decision as to appointment.

† Do not confuse this with a judgment against deceased's personal representatives as to which registration is not necessary. (Smith v. Morgan, 5 C. P. D., 337; *re* Maggi, Winehouse v. Winehouse, 20 Ch. D., 545; 51 L. J., Ch., 560; 30 W. R., 729.)

Searches.—Note Conveyancing Act, 1882, sec. 2, and the rules thereunder.

Search only made for bankruptcy if circumstances such as to give ground for suspicion.

Enquiry should always be made of any tenant of property as to the nature and terms of his tenancy.

PURCHASE DEEDS.

Arbitrary fines in copyholds now defined to mean two years improved value of the land.

Corporation purchasing copyholds.—The lands must be surrendered to a trustee, who will be admitted, and not corporation direct.

Admission of one joint tenant, admission of all, and one can release his share to another without payment of any additional fine. Same in the case of co-parceners.

Tenants in common must be admitted severally, and a fine must be paid in respect of the share of each.

If limited to one for life and then in remainder, admission of tenant for life operates also as admission of remainder-man, and one fine only is payable.

Widow of copyholder not entitled to free bench, except by custom, and she has no such right out of a trust of copyholds, nor out of copyholds surrendered to her husband, but of which he was not admitted.

A lord having only a limited interest in manor may do all ministerial acts to bind his successor, so that if he accepts a surrender, his successor is bound to admit the surrenderee.

In enfranchisement under the Copyhold Acts the right to mines and minerals remains in the lord, and the commonable rights of the tenant are still preserved to him.

Married Women.—Acknowledgment before one commissioner now sufficient. (Conveyancing Act, 1882, sec. 7.)

Married Women's Property Act, 1882, renders acknowledgment by married women unnecessary.

By reason of same Act if wife entitled to leaseholds, husband does not take them as before *jure mariti*, but as her administrator.

Infant's contract to purchase land is only voidable; he may avoid or confirm it on attaining his majority, and his representatives have the same right.* He could not, however, on avoiding it, recover back his deposit.

Solicitor.—Though a purchase by a solicitor from his client may in some cases stand, yet, if instead of purchasing openly, he buys in the name of a third person, concealing the fact that he was the real purchaser, this must vitiate the sale, though in other respects the sale is fair. (McPherson v. Wall, 3 Appeal Cases, 254.)

Convict.—Under 33 & 34 Vict., c. 23, his property vests in an administrator, and he cannot sell or purchase, during sentence, but it would appear that he can make a will, as this only operates on his death. (See Vol. II., p. 351.)

Corporations can only hold land by license from Crown, or statutory provision. Companies under Companies' Act, 1862, may hold land. Any company formed, not for the purpose of gain, cannot hold more than two acres without sanction of Board of Trade.

Recitals in deeds should be simply put; in special cases they are useful to make matters plain.†

Covenants for title.—Now unnecessary, being implied by Conveyancing Act, 1881, sec. 7, which sec. should be carefully considered and the particular covenants implied in each case noted.

Where sale by trustees, with consent of tenant for life, he

* The idea is that the Infants' Relief Act, 1874, does not apply here. In Seaborne's Vendors and Purchasers (3rd edition, p. 104) the contrary is stated, but probably the statement in "Prideaux" is correct, though the point does not appear free from doubt.

† Also see further as to advantage of recitals, 37 & 38 Vict., c. 78, sec. 2 (2) and case of Bolton v. London School Board, 7 Ch. D., 766; 47 L. J., Ch., 461; 26 W. R., 549; also Conveyancing Act, 1881, sec. 3 (3).

joins and covenants for title, but not as respects the reversion, beyond his own acts and acts of persons claiming under him.

Covenant not binding on assignee.—Covenant not to build, &c., entered into by fee simple owner does not run with land being simply a covenant in gross, and therefore a purchaser cannot be bound thereby unless he purchases with notice, actual or constructive, of the covenant; if, however, he purchases with such notice Equity will restrain him infringing it. (Tulk v. Moxhay, 2 Phil., 774.)

In case of restrictive covenants by purchasers of different lots, to prevent all questions, it is desirable where it is intended that covenants of this kind shall be enforceable, not only by the vendor, but by all the purchasers *inter se*, to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes.

Outstanding legal estate must be got in by purchaser unless it has ceased to be existing by reason of the Statute of Limitations. Where a legal mortgage was paid off but no reconveyance was executed it was held that the mortgagee was neither a trustee nor a mortgagee after the money was paid, and that therefore, after the period prescribed by the Statute of Limitations, all further legal right was barred. (Sands to Thompson, 22 Ch. D., 614; 52 L. J., Ch., 406.)

MORTGAGES.

Effect of reservation of equity of redemption to different uses.—This will not usually alter the destination of the property; thus, if on a mortgage by a tenant in fee the equity of redemption should be reserved to him in tail, yet the land would, subject to the mortgage, revert to him in fee simple in the absence of an evident intention to resettle the estate.

Notice.—After day limited for payment mortgagor must

give six months' notice of his intention to pay off, or else pay six months' interest.

Absolute covenants for title are required from a Mortgagor.—Reason, because the mortgagee is entitled to the best security, and as the only damages which could be recovered by the mortgagee for a breach of the covenants for title would be the amount due on the mortgage, which the mortgagor is bound in any case to pay, he cannot complain of the unqualified liability.

Insurance.—Always insert in a mortgage express covenant to insure, because power of insurance given by sec. 19 of Conveyancing Act, 1881, only arises *after* the date of the mortgage deed.

Mortgage of land registered under Land Transfer Act, 1875.—This can only be created by prescribed form of mortgage, attested by a solicitor, and duly verified and registered.

Equitable mortgage.—In case of copyholds, effected by deposit of copies of the court rolls.

In case of lands registered under Land Transfer Act, the instruments to be deposited to create an equitable mortgage are the land certificate in the case of freeholds, and the office copy registered lease in the case of leaseholds.

Consolidation.—Refer to case of Vint v. Padgett, and cases cited in notes in Indermaur's Conveyancing and Equity cases, 5th edition, 85-88.

Specially also note hereon, Conveyancing Act, 1881, sec. 17.

Rights against Mortgagee who is paid off.—He may be compelled, not only to convey the mortgaged estate, but also to transfer the mortgage debt. (Conveyancing Act, 1881, sec. 15; and see explanatory and amending provision hereon in Conveyancing Act, 1882, sec. 17.)

Equity of Redemption.—4 & 5 Will. and Mary, c. 16, enacts that mortgagor forfeits equity of redemption by

mortgaging a second time, concealing prior mortgage. Note that penal statutes must be construed strictly, and that therefore neither an equitable mortgage by deposit of title deeds, nor a mortgage under a deed in the form of a further charge, without a proviso for redemption, is a second mortgage within the meaning of this Act.

Mortgagor's Powers.—He may distrain for rent and sue for trespass until mortgagee gives notice of his intention to take possession. (Judicature Act, 1873, sec. 25 (5).)

He may, when in possession, make leases under provisions of Conveyancing Act, 1881, sec. 18.

Whilst in possession he may cut timber, unless the estate without the timber is a scanty security.

He may take growing crops until possession has been demanded by the mortgagee, but not after such demand.

Mortgagee's Powers.—May all be exercised by him at once,* but if after foreclosing he sues on his covenant he must have the estate still in his possession ready to be restored to the mortgagee on repayment, *so that* if he sells after foreclosure he cannot sue for deficiency.

Remedy of Equitable Mortgagee is foreclosure, James v. James (L. R., 16 Eq., 153; 21 W. R., 522)†; but, if there is a memorandum containing an agreement to execute a legal mortgage, then he may come to the court for foreclosure or sale. (York Union Bank v. Artley, 11 Ch. D., 205.) Note hereon also section 25 of Conveyancing Act, 1881, under which the Court has always a discretion to order a sale.

* Note the recent cases of Popple v. Sylvester (22 Ch. D., 98; 52 L. J., Ch., 54), and *Ex parte* Fewings *Re* Sneyd (25 Ch. D., 338; 53 L. J., Ch., 545), on the point of whether recovering judgment merges the right on the covenant. Generally it must be assumed that it does, but there may as in Popple v. Sylvester be particular words preventing it.

† See further as to the application of the word "foreclose," and the proper form of the absolute foreclosure judgment as settled under the sanction of the late Master of the Rolls, the recent case of Lees v. Fisher (22 Ch. D., 283; 31 W. R., 94).

Statutory Powers to Mortgagees.—Note sections 19 and 20 of Conveyancing Act, 1881. These powers may be relied on.

Improper Sale.—Purchaser's title will nevertheless be good, unless facts were brought to his knowledge showing that the sale was improper.

Bankruptcy of Mortgagor.—Note provisions of rules 65—69 under the Bankruptcy Act, 1883, under which a mortgagee, whether his security be legal or equitable, may apply to the Bankruptcy Court and obtain an order for sale.

Limitation.—In foreclosure or sale only six years' arrears of interest can be recovered, and probably in a redemption suit the mortgagee could not claim more, but this must be considered doubtful. (Vol. I., p. 488.) An action by mortgagee on the covenant to recover his principal money must be brought within 12 years. (37 & 38 Vict., c. 57, sec. 80; Sutton v. Sutton, 22 Ch. D., 511.) This is so even though there is a collateral bond. (Fearnside v. Flint, 22 Ch. D., 579.) As to what interest can be recovered in an action on the covenant, it is stated, in this edition of Prideaux (though with considerable doubt) that it is probably only six years.*

Twelve years' uninterrupted possession by mortgagee without acknowledgment is an absolute bar as against mortgagor, and those claiming under him, *although he or they may have been under disability.* (Forster v. Patterson, 17 Ch. D., 132; 50 L. J., Ch., 603.)

An acknowledgment given *after* the expiration of 12 years cannot revive mortgagor's rights. (Sanders v. Sanders, 19 Ch. D., 373; 51 L. J., Ch., 276; 30 W. R., 280.)

* See Vol, I., p. 489, and note (l) on that page. I do not agree, and am of opinion that 12 years can be recovered. The student has, however, simply to state the point as doubtful.

Mortgagee's Powers.—Note section 18 of Conveyancing Act, 1881, as to granting leases.

Mortgagee is entitled to open mines if security insufficient.

Mortgagee may cut and sell timber (not ornamental) under section 19 of Conveyancing Act, 1881. If mortgage deed executed before 1st January, 1882, he can only do this if security insufficient.

Annual Rests.—Only made generally when interest in arrear at time mortgagee entered into possession, but note that a mortgagee of leaseholds may take possession when there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground rent, or non-insurance.

Executors' and Administrators' Powers.—They may sell or mortgage personal property including leaseholds. Purchasers from them of leaseholds should, if possible, obtain the concurrence of any specific legatee, lest executor should have made a previous assent to the legacy.

Acquirement of Legal Estate.—Note that the protection afforded by acquirement of the legal estate extends to cases where the vendor or those from whom he claims, is or are guilty of gross fraud. (Refer to instances given in Vol. I., p. 498.)

Observe that a mortgage is but a security for a debt, and consequently that the interests of persons claiming under a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security, and therefore if there is no debt so that the transferor had nothing, neither can the transferee have anything either. (Refer to instances, Vol. I., pp. 500-502.)

Tacking.—Third mortgagee taking conveyance of legal estate from first mortgagee who has been previously paid off is *not* protected, for when he was paid off he became a

trustee for the second mortgagee, and it is a breach of duty in him to convey the legal estate to the third, who being aware of such breach of duty, will not be allowed to profit thereby.

Notice.—Note provisions of Conveyancing Act, 1882, sec. 3.

Persons not getting deeds handed over will be charged with constructive notice of any incumbrance, unless under special circumstances.*

A trustee in bankruptcy to whom an outstanding fund or property of bankrupt passes, does not lose his right by omitting to give notice of his title, and will not be postponed to a subsequent assignee for value without notice of the bankruptcy. (*In re* Bright's Settlement, 13 Ch. D., 413; 28 W. R., 551.)

Where assignee, beyond being a beneficiary, is also a trustee, the notice to him is nevertheless a valid notice.

Note specially that it has been decided that notice to solicitor of trustees is not sufficient notice to the trustees, unless such notice is in fact communicated by him to the trustees. (Saffron Waldon Benefit Building Society v. Rayner, 14 Ch. D., 696; 49 L. J., Ch., 465; 28 W. R., 681.)

If an assignee or incumbrancer gives notice to trustees who are afterwards changed, he runs the risk of having the trust property distributed without reference to his claim, as the new trustees are not bound to inquire of the old trustees as to what notices they have received. Therefore, if possible, get notice indorsed on original trust deed, or if the property permit, put on a distringas.

Risks attending Second Mortgage.—(1) Possible postponement to a prior equitable mortgage; (2) Tacking; (3) Consolidation.

* See hereon Agra Bank v. Barry, Indermaur's Conveyancing and Equity Cases, 5th edition, 102.

Object of making Mortgagor a party on transfer of mortgage.—So that he shall admit the amount of the mortgage money; if he is not a party, transferee takes subject to all equities between mortgagee and mortgagor, and all rights of mortgagor to call state of accounts in question.

BILLS OF SALE.

Bills of Sale Act, 1882.—Applies to bills of sale given on or after 1st November, 1882, by way of security for money, and also to such Bills of Sale given within 7 days before 1st November, 1882, if they were not registered at that date, but not to Bills of Sale executed more than 7 days before that date (Hickson v. Darlow, 23 Ch. D., 690; 31 W. R., 417). With regard, however, to bills of sale before this date, though the Act does not apply to them strictly, yet it has been decided that seizure can only be made on the events specified in sec. 7 of the Act of 1882 (*ex parte* Cotton, 11 Q. B. D., 301; 32 W R., 58.)

Observe specially the essentials under this Act as detailed in Vol. I., pp. 695, 696, and particularly note the importance of observing in substance the form of bill of sale given (see hereon Davis v. Burton, 11 B. D., 537; 52 L. J., Q. B., 636; Melville v. Stringer, 13 Q. B. D., 392; 53 L. J., Q. B., 482; Hetherington v. Groome, 13 Q. B. D., 789; 53 L. J., Q. B., 577).

Transfer of registered bill of sale need not be registered.

First unregistered and then registered Bill of Sale.—Formerly the unregistered one was good between the parties, though bad against the subsequent registered one; but now the unregistered one is simply altogether void.

Future property cannot be assigned, except as against the grantor, but there are two exceptions in which it may be assigned—(1) growing crops, (2) fixtures, &c.

Seizure.—Learn up the five events on which only seizure

under a bill of sale now valid and case of *ex parte* Cotton (*supra*).

After seizure goods must be allowed to remain five days, and summary application may be made to a judge to restrain removal during that time.

Order and disposition clause in Bankruptcy Act, 1883, only applies to goods used by a person in his trade or business. If the goods are of this description, then the clause applies to render valueless even a registered bill of sale given as security for money, if the goods are in the grantor's possession at the time of his bankruptcy. But observe particularly that goods comprised in a bill of sale given otherwise than as security for money are not within this rule, for sec. 3 of the Bills of Sale Act 1882, limits the repeal of sub sec. 15 of sec. 20 of the Bills of Sale Act, 1878, to bills of sale given by way of security for money (Swift v. Pannell, 24 Ch. D., 210; *Ex parte* Izard, 23 Ch. D., 409).

Amount of bill of sale must not be less than £30.

Fixtures.—If mortgage of premises made with fixtures thereon, registration not required unless the fixtures consist of trade machinery, as defined in the Act of 1878, when registration always necessary.

Consideration for bill of sale must be truly set forth. When money paid to creditor of the grantor, it is sufficient to state in bill of sale that it is paid to grantor. (*Ex parte* Bolland, 21 Ch. D., 543; 31 W. R., 102.) But it is otherwise if part of money retained for other purposes, *e.g.*, to pay the costs of preparing the bill of sale. (*Ex parte* Firth, 19 Ch. D., 419; 51 L. J., Ch., 473; 30 W.R., 952.)

Sufficient description of grantor, and of attesting witness, must be specially attended to.

Marriage Settlement.—Ante-nuptial settlement need not be registered.

Marriage is a valuable consideration, but if the marriage

is made part of a scheme for defeating creditors, the instrument is void, under 13 Eliz., c. 5.

Assignment for the benefit of Creditors generally need not be registered.

Act of Bankruptcy.—Bill of Sale is one, if of whole of grantor's property for a past debt, unless there is a substantial exception, *e.g.*, book debts which are considerable in their amount. Not an act of bankruptcy, if given in pursuance of an agreement made when the money was advanced.

VOLUME II.

LEASES.

Notice to Determine.—Half a year expiring at end of current year of tenancy, but if tenancy under Agricultural Holdings' Act, 1883, then one year. Notice to quit is *primâ facie* waived by acceptance, or even demand of rent after expiration of the notice, but the presumption of waiver may be rebutted. (See Vol. II., p. 25.)

Tenant holding over after the expiration of his lease becomes a tenant at sufferance until payment of rent yearly, half yearly, or quarterly, when he becomes a tenant, from year to year, on such of the terms of the lease as are applicable to a yearly tenancy. If a tenant holds on after the expiration of his own notice to quit he is liable to pay double the yearly rent. (11 Geo. II., c. 19, sec. 18.) If landlord gives notice in writing to quit, and tenant holds over he is liable to pay double yearly value (4 Geo. II., c. 28, sec. 1), but the holding over must be contumacious. (Swinfen v. Bacon, 30 L. J., Ex. 33, 368; See Vol. II., p. 29.)

Instrument void as a lease by not being under seal, under

8 & 9 Vict., c, 106, may be sued on as an agreement for a lease. Specially note the recent case of Walsh v. Lonsdale (21 Ch. D. 9; 52 L. J., Ch. 2; 31 W. R., 109), deciding that since the Judicature Acts the rule no longer holds good that a person occupying under an executory agreement for a lease, is only made tenant from year to year at law by the payment of rent, but that he is to be treated in every court as holding on the terms of the agreement.

Option to yearly tenant to have a lease continues until landlord calls on tenant to determine it. If landlord agrees not to turn tenant out so long as he pays rent, this is binding as long as the landlord's interest continues, and during the tenant's life but no further.

Distress may be for six years rent, and if lease has determined it may be made within six calender months from its determination, provided landlord's title continues and tenant still in possession. (8 Anne, c. 14, secs. 37, 38.) The executors of a deceased landlord have the same right of distress for rent accrued in his lifetime as the landlord would have had if living. (3 & 4 Will., 4, c. 42, secs. 37, 38.)

If tenant clandestinely removes goods to prevent distress, landlord may follow them within thirty days (11 Geo. II., c. 19). But note the recent case of Gray v. Stait, (11 Q. B. D., 668; 52 L. J., Q. B. 412, deciding that this only applies where the goods would have been distrainable if they had remained on the premises, and cannot be exercised if at the time of seizure the tenancy has determined.

Protection of lodger's goods under 34 & 35 *Vict., c.* 79.—To constitute person a lodger the superior landlord must retain some possession or control over the premises, *e.g.*, having a room in the house. (Phillips v. Henson, 3 C. P. D. 26; 47 L. J., C. P. 273; see also Morton v. Palmer, 51 L. J., Q. B. 7; 30 W. R., 115.

Note what are usual covenants in a lease.

In covenant to pay all rates, taxes, &c., property or income tax is excepted. The addition of the word "assessments" makes covenant more comprehensive, and includes payments tenant would not be liable to make, *e.g.*, sewers rate and land tax, provided that the covenant is to pay all taxes, assessments, &c., imposed *on the landlord* or tenant in respect of the premises (Budd v. Marshall, 5 C. P. D., 481; 50 L. J., Q. B. 24; 29 W. R., 148; Allum v. Dickinson, 9 Q. B. D., 632; 30 W. R., 930.) It does not, however, include tithe rent charge.

Waste.—A tenant is *practically* not liable for alteration in premises which do no injury to the inheritance.

Repairs.—Yearly tenant must keep premises wind and water tight, nothing more, and it appears a tenant for a term of years is in same position in the absence of any covenant. Neither are liable for permissive waste.

Under a general covenant to repair, the class and description of the house may be taken into account, and it must be kept and delivered up in good repair with reference to the class to which it belongs.

Landlord not bound to do repairs in absence of covenant. In the case of a furnished house, however, there is always an implied covenant or warranty that it is reasonably fit for occupation. (Wilson v. Finch Hatton, 2 Ex. D., 336; 46 L. J., Ex., 489.)

Refer to instances of breaches of covenants not to carry on certain trades, &c. (Vol. II., p. 15.)

Covenant not to assign.—This does not prevent a bequest, nor a deposit by way of security, nor involuntary alienation by bankruptcy, &c., and the lease having thus come into the possession of a trustee in bankruptcy the covenant does not bind him An underlease is not a breach of a covenant not to assign. An assignment by one of two joint tenants to the other is a breach of such a covenant.

A covenant not to assign without license, is not a strictly "usual" one, but if a person agrees to purchase a lease, the mere fact that it contains such a covenant is no defence to an action for specific performance. Any tenant in assenting to such a covenant should have it qualified by proviso that license not to be unreasonably withheld, and if landlord then refuses license unjustifiably, lessee may assign without it.

Proviso for re-entry on nonpayment of rent is a usual and proper proviso where there is an agreement for a lease to contain usual covenants and conditions, but not a proviso for re-entry on breach of any other covenant. (Hodgkinson v. Crowe, L. R. 10, Ch. 622; 42 L. J., Ch. 680.)

Under this proviso for re-entry, demand is necessary unless lease provides to the contrary. Note, however, now provision of Common Law Procedure Act, 1852, sec. 210, under which landlord can distrain, if no sufficient distress on the premises and half a year's rent in arrear.

Note particularly, provisions of Conveyancing Act, 1881 (sec. 14), giving power to court to relieve in cases of breaches of covenants in lease, and exceptions thereto (sub-sec. 6). This provision does not effect the law relating to re-entry or relief in case of non-payment of rent. The enactments of this Act hereon are retrospective and apply notwithstanding any provision to the contrary.

Apportionment of rent, &c.—Rent at common law follows the reversion, and is apportionable on a partial alienation, and by 22 & 23 Vict., c. 35, sec. 35, assignee of part of reversion has when rent legally apportioned, full powers of re-entry for nonpayment of rent. By 32 Henry VIII., c. 34, benefit and liability under covenants and conditions pass on any assignment of reversion. Now under Conveyancing Act, 1881, (secs. 10-12), as regards leases made after 31st December, 1881, these provisions are enlarged,

and assignee of reversion or part of reversion has now full benefit of all conditions and covenants in the lease.

Surrender of a lease by operation of law takes place if tenant accepts a new lease.

Emblements.—If tenant in fee dies intestate administrator entitled to crops but heir to land. If, however, land devised, the crops also pass to devisee without express mention.

Fixtures.—See Vol. II., pp. 31-34, and see Elwes v. Mawe, and notes in Indermaur's Common Law Cases, 5th edition, p. 59. Note that under the Bankruptcy Act, 1883, sec. 55, a trustee, after removing fixtures, may still disclaim, but of course the consent of the court would have to be obtained.

Improvements.—Note provisions of Agricultural Holdings' Act, 1883, hereon, as well as on fixtures, distress for rent, and other points. The Act is epitomised post, pp. 99–105.

Leases made under powers.—The power must be strictly followed. However, if not, under 12 & 13 Vict., c. 26, if tenant has entered, it is a contract for a valid lease, but reversioner may confirm it as it stands. 13 & 14 Vict., c. 17, provides that the confirmation must be in writing.

Leases by statute.—Former Act on this subject, 19 & 20 Vict., c. 120, now repealed.

Present Acts, the Settled Estates Act, 1877 (40 & 41 Vict., c. 18), and Settled Land Acts, 1882 (45 & 46 Vict., c. 38), and 1884 (47 & 48 Vict., c. 18).

Remember that the provision of both Acts may apply, and generally compare the powers under each Act. Note under sec. 56 of Settled Land Act, 1882, that if any conflict the provisions of that Act are to prevail.

The terms of leases under the Settled Land Act, 1882 (sec. 6), are :—Building lease, 99 years, mining lease, 60 years, and any other lease, 21 years. Note special terms and conditions of such leases (sec. 7), special regulations

regarding building and mining leases (secs. 8, 9, 11), and general power with court's sanction to vary length of building and mining leases, and even grant same in perpetuity if customary or beneficial (sec. 10). Previously to making lease, tenant for life must give notice to trustees of settlement and their solicitors (sec. 45), which, however, may now, under the Act of 1884 (sec. 5), be waived, and notice of a general intention to lease is also made sufficient. Prohibition or limitation against these powers of tenant for life are void (sec. 51).

The provisions of this Act apply not only to settlements since, but also prior to the Act (sec. 2, sub-sec. 1).

Leases by ecclesiastical persons and bodies.—These are regulated by various statutes and must not be for more than 21 years, or three lives, except as regards houses in towns, which may be demised for 40 years, and incumbent must obtain the confirmation of the patron and ordinary in order to bind successor.

Quiet enjoyment.—Covenant for, is implied in a lease, by use of word "demise," but, in the interests of both lessor and lessee, it should not be relied on, as it ceases with the lessor's estate, and is also too general.

TRUSTEES.

Bare trust defined.—It is a trust where the instrument imposes no duty beyond that implied by law from the bare relation of trustee and *cestui que trust.* An active trust will become a bare trust when all the special duties have been performed or otherwise come to an end.

Duties of Trustees for Sale.—They must use diligence to obtain the best price, and take care to satisfy themselves as to the value of the property before they proceed to a sale. Unless authorised to defer sale, their duty is to sell as soon as they conveniently can. As regards trusts created on or

since 1st January, 1882, see also Conveyancing Act, 1881, sec. 35.

A trust to sell within a given time will not preclude trustees from selling after that time if the nature of the trust requires that there must certainly be a sale, notwithstanding the lapse of time, either by the trustees or the court.

Note that now under sec. 56 of the Settled Land Act, 1882, the consent of the tenant for life of a settlement is necessary to the exercise by the trustees of any powers which comprise any of these powers conferred by the Act. (See hereon *Re* Duke of Newcastle's estates, 24 Ch. D., 129; 52 L. J., Ch. 645).

Surface and Minerals.—Under 25 & 26 Vict., c. 108, trustees, by sanction of Court obtained on petition, may sell lands and minerals separately, and under the Settled Land Act, 1882, (sec. 17), this may always be done in sales taking place as provided by the Act, so that the former Act, though still in force, is now practically superseded.

Mortgaging under a Power of Sale.—This is allowed if the design of the power is to raise money and not to convert.

Discretionary Power of Sale.—Freehold, leased with discretionary power to tenant to buy, retains quality of real estate until option of purchasing is exercised.

Breach of Trust.—If trustee in selling commits such a breach, purchaser is protected if he had no notice of breach, for he gets the legal estate. But if sale is not actually completed the court will not decree specific performance, and will, even at the suit of the *cestui que trust*, restrain the trustee from carrying the sale into effect, leaving the purchaser to any remedy he may have against the trustee for damages.

Receipts of Trustees.—Trustees receipt always sufficient for purchaser, or any one dealing with trustees. (22 & 23 Vict. c. 35, sec. 23; Conveyancing Act, 1881, sec. 36). All the trustees must join in receipt unless they have

specially given them a joint and several power; and following on this same principle, see the recent decisions of *Re* Bellamy and Metropolitan Board of Works, 24 Ch. D., 387; 52 L. J., Ch. 870; and *Re* Flower and Metropolitan Board of Works, 27 Ch. D. 592; 53 L. J., Ch 955).

Executor may make a good title to testators' chattels real even though they are specifically bequeathed.*

Survivor of Trustees formerly could not exercise powers given to several trustees only, but now in trusts governed by Conveyancing Act, 1881 (sec. 38), this is otherwise unless the contrary is expressed.

Who may execute Trusts.—A trust follows the estate, so that where there is not a mere power, but an actual trust, a survivor of several trustees, or the heir of a trustee, may exercise it. But it appears according to the weight of authority, that this rule did not apply to a devise so as to give devisee of trust estate power to execute the trust, unless the trust was expressly limited to the trustee and his assigns. (Titley v. Wolstenholme, 7 Beav. 425; *In re* Morton and Hallett, 15 Ch. D., 143; 49 L. J., Ch., 559. See, however, to the contrary, Osborne v. Rowlett, 13 Ch., D., 774; 49 L. J., Ch. 310.) All such questions are, however, now disposed of in the case of a trustee dying on or after 1st of January, 1882, by Conveyancing Act, 1881 (sec. 30), under which trust estates pass to personal representatives, notwithstanding any testamentary disposition to the contrary, and they are to be deemed the heirs and assigns within the meaning of all trusts and powers. (See on this subject generally, Lord Braybroke v. Inskip, and notes in Indermaur's Conveyancing and Equity Cases, 5th edition, p. 40).

Note, however, that the above-mentioned provision

* But of course it is most advisable to get legatee to join, for it is possible that executor may have assented to a disposition by him previously.

would appear not to apply to a mere power unaccompanied by any estate in the land, so that in such a case, the power would not pass to the personal representatives.

Trustee buying of cestui que trust.—Though not generally allowed, it may be, under special circumstances, as where *cestui que trust* was *sui juris*, and took upon himself the whole management of the sale. (Coles v. Trecothick, 9 Ves. 246.)* A disclaiming trustee may purchase from acting trustee. A tenant for life of a settled estate which is being sold, can buy, unless it is a sale by himself under the powers conferred by the Settled Land Act, 1882 (sec. 53) when he cannot.

Trustees' powers of investment.—Consols, real securities (22 & 23 Vict., c. 35, 23 Vict., c. 38); stock, the interest of which is guaranteed by Government (30 and 31 Vict., c. 132); Metropolitan Consolidated Stock (34 & 45 Vict., c. 47, sec. 13.) If they have power to invest in debentures of railway companies, they may invest in debenture stock (34 & 35 Vict., c. 27); or in debentures issued under the Local Loans Act, 1875 (38 & 39 Vict., c. 83, sec. 27). Also, if they have a power of *purchasing* land, they may invest in debenture stock of any railway company in the United Kingdom which has paid a dividend on its ordinary stock for 10 years previously. (Settled Land Act, 1882, secs. 21, 23.) As to the investment of Capital Trust Money under the Settled Land Act, 1882, note sec. 21 of that Act.

A power to invest on real securities does not authorise an investment or mortgage on land held for a long term of years. (Re Boyds' Settled Estates, 14 Ch. D., 626; 49 L. J., Ch. 808.)†

* A trustee should not, however, rely on this, but if he desires to purchase, should get the consent of the Court by means of a summary application under Order LV., rule 3.

† In Prideaux (Vol. II., p. 153), it is stated this difficulty may now be got over by converting the term into a fee simple, under sec. 65 of the Conveyancing Act, 1881, but in many cases this would not be so now, in consequence of sec. 11 of the Conveyancing Act, 1882.

Discretion in investments.—However absolute a discretion may be given to trustees, they must act reasonably and with prudence, so that they must not invest on personal security, or in any hazardous stock bearing a high rate of interest, and which cannot be considered permanent.*

Note that the general rule is that a trustee may safely advance two-thirds of the value of freehold lands, and half the value of house property, but this is not a hard and fast rule, the true test being, whether the trustee has acted as a prudent man would in dealing with his own property. (*In re* Godfrey, Godfrey v. Faulkner, 23 Ch. D., 483.) See further on this subject the recent cases of Fry v. Tupson (33 W. R., 113; 51 L. T., 326); and Hoey v. Green (W. N., 1884, p. 236; *Law Students' Journal*, 1885, p. 5.) In this last case the rule was laid down that trustees must not lend on house property, which has never been occupied, at all events, if the owner is a builder, and that in all cases the security must be actually producing the interest at the time of the advance.

Liability of Trustees for default of persons employed by them.—They are not liable for money temporarily and reasonably placed with bankers who fail, nor for goods entrusted to a tradesman to sell where he fails, nor for the fraud of a broker who embezzled money given to him for investment. (Speight v. Gaunt, 22 Ch. D., 727.) They are, however, said to be liable for a loss occasioned by the fraud of their solicitor, but probably if the money was entrusted to him in a proper way, and at a proper time, on the authority of the case just mentioned, it would be now held otherwise. (See hereon Vol. II., pp. 164, 165.)

Disclaimer.—Trustees may disclaim, but not after they

* If a trustee feels himself in doubt as to whether under his discretionary powers he would be justified in making a certain investment, he can, no doubt, apply to the court for advice and directions, under the provisions of 22 & 23 Vict., c. 35, sec. 30, by petition in a summary way.

have accepted trusts. If they are also executors, proving the will is an acceptance of the whole of the trusts, but the converse does not hold good, so that renouncing the executorship does not of itself amount to a disclaimer of trusts. Chattels, personal and real, and copyholds, may be disclaimed by parol, but it is doubtful whether a trust of freeholds can be disclaimed by parol. It is certainly always advisable to disclaim by deed.

Appointment of new Trustees.—Not necessary now to insert powers, provisions of Conveyancing Act, 1881 (sec. 31), being very ample. Note, particularly in sec. 31 (sub-sec. 1) the events on which the power arises. This provision is retrospective.

Retirement of Trustees.—This could formerly only be by consent of *cestuis que trusts*, or of court, but now trustees may, if there are more than two trustees, retire with consent of co-trustees and such other person (if any) as is empowered to appoint trustees. (Conveyancing Act, 1881, sec. 32.)

Trustee Relief Act (10 & 11 Vict., c. 96).—The owner of land charged with a legacy cannot pay amount of legacy into court under this Act, but he may do so under sec. 5 of Conveyancing Act, 1881. Money payable under a policy of life assurance is not money held upon a trust, nor is money deposited with a banker, but if it is paid in in such cases, and party petitions, he cannot object to the irregularity of paying in.

Duty of Bare Trustee.—To convey legal estate to persons entitled to it.

Presumption of Conveyance of Legal Estate may arise from dealings on the part of the equitable owner inconsistent with the supposition of the legal estate being outstanding. The rule is, that if before a jury it would be the duty of a judge to give a clear direction in favour of the fact of conveyance, then it is presumed as between vendor and purchaser.

Remainder-man's Rights to Production Deeds in Possession of Tenant for Life.—If a vested remainder such a right exists, but not if the remainder is contingent.

Trustee who is a solicitor or auctioneer cannot charge for his professional services. One of several trustees who is a solicitor may be employed by his co-trustees in any matter of litigation, but not in the administration of the estate out of court.

HUSBAND AND WIFE.

Observe the statement of the effect of the different Married Women's Property Acts (Vol. II., 183-185).

Curtesy.—Husband entitled to curtesy out of wife's separate estate in land. (He takes her personalty by taking out letters of administration.)

Curtesy not allowed out of estates in remainder unless they fall into possession during coverture. It does attach to an equity of redemption and to an estate tail. No curtesy in copyholds except by special custom.

Irrespective of the Married Women's Property Act, 1882, a *chose in action* which cannot by possibility fall into possession during husband's life cannot be assigned by him so as to prevent wife's right by survivorship.

Reversionary interest of wife in personalty cannot be made an interest in possession so as to give husband rights over same, by means of release of prior interest. As to disposal of such reversionary interests now, note Malins' Act (20 & 21 Vict., c. 57), which, however, only applies to interest under instruments executed after 31st December, 1857.

Note that of course now in all cases of property coming to woman on or since 1st January, 1883, or when she has been married since that date, it is to her separate use whether in possession or reversion, and can always be disposed of by her alone.

Equity to a Settlement may be released by deed acknowledged under 20 & 21 Vict., c. 57, but this subject is of little importance since the Married Women's Property Act, 1882.

Separate Estate.—Irrespective of Married Women's Property Act, 1882, to give separate estate to married women, words must be used showing intention to exclude husband. The word "sole" by itself will not have that effect. Note particularly now the Act of 1882. Clause against anticipation still allowed under this Act (sec. 19), but see hereon Conveyancing Act, 1881 (sec. 39), and generally hereon see Tullett v. Armstrong, (Indermaur's Conveyancing and Equity Cases, 5th edition, 77-79.)

If wife lets husband receive income from her separate estate, it amounts to a gift to him.

Restraint on anticipation contained in a marriage settlement of property of wife's, has no validity against debts contracted by the wife before marriage.

Judicial Separation makes woman with regard to property in the position of a *feme sole*, and on her decease, should she die intestate, her property will go as if her husband were dead.

Note powers of Divorce Court to order settlement of property for innocent party and children, and also to enquire into and vary existing settlements, and that in consequence of 41 Vict., c. 19, this power exists now, notwithstanding there are no children of the marriage.

SETTLEMENTS.

Generally hereon, observe now that if desired simply to give wife absolute property utterly beyond husband's control, settlement not necessary, on account of the Married Women's Property Act, 1882, but if desired to restrain her from anticipating or to make provision for children, then *settlement* necessary.

Note ordinary trusts of marriage settlement of personal estate, and the uses of a strict settlement of realty.*

Maintenance.—Note that the clause as to maintenance, which used to be inserted as a common form in settlements may now safely be omitted, having regard to sec. 43 of Conveyancing Act, 1881, which applies to instruments coming into operation either before or after the commencement of the Act.†

Covenant to settle after acquired property does not include property the woman then had in possession, but it does include reversions she then had if they afterwards fall into possession during coverture. It includes property to the separate use of married woman, if the covenant is not merely by husband but by her. If wife at time of settlement an infant, the covenant does not absolutely bind her, but if she takes any benefit from her husband under the settlement, she will be put to her election.

Where realty is settled, not in strict uses, but so that children to take equally, the proper plan is to convey it to trustees in trust for sale.

Settled Land Act, 1882.—With regard to settlements, note generally the powers conferred on tenants for life by this Act, and particularly as to leasing (see ante, pp. 26, 27), and also as to sales (secs. 3 and 4), and particularly observe the following points:—

General regulations as to sale, best price, &c. (sec. 4).

Restriction as to mansion-house, park, &c. (sec. 15).

Separate dealing with surface and minerals allowed (sec. 17).

Application of capital moneys arising from any sale (sec. 21).

* See as to personalty precedent No 1, p. 240 (Vol. II.), and as to realty precedent No. 27, p. 321 (Vol, II.).

† As to the construction of sec. 43 of the Conveyancing Act, 1881, see the very important recent case (decided too late for insertion in Prideaux), of *In re* Dickson, Hill v. Grant (W. N., 1884, p. 335; *Law Students' Journal*, 1885, p. 4).

Moneys arising from sale of lands in England cannot be invested in land out of England (sec. 23).

Capital moneys arising from any sale may be applied in certain improvements (sec. 25) subject to special conditions (sec. 26).

Compounding claims, &c.—Two or more trustees together may now do this, or a sole trustee may, when only one appointed. (Conveyancing Act, 1881, sec. 37.)

18 & 19 *Vict., c.* 43.—Before approving a settlement by an infant, who is not a ward of court, under this Act, the court will not direct an enquiry as to the propriety of the contemplated marriage. Under Order LV, rule 26, of 1883 applications under this Act are now made by summons in chambers.

Voluntary settlements.—Strangers or collaterals provided for by limitations in a marriage settlement are not usually within the marriage consideration, and are volunteers.

A settlement of leaseholds, where they are subject to any rent or covenants, cannot be considered voluntary under 27 Eliz., c. 4. (Price v. Jenkins, 5 Ch. D., 619; 46 L. J., Ch. 805.) But this doctrine does not apply as against creditors under 13 Eliz., c. 5. (Ridler v. Ridler, 22 Ch. D., 74; 31 W. R., 93.)

Subsequent creditors may set aside a voluntary settlement under 13 Eliz., c. 5, if it was made when settlor about to embark in some hazardous enterprise, though he was perfectly solvent at the time. (Mackay v. Douglas, L. R. 14, Eq. 106; *ex parte* Russell, *re* Butterworth, 19 Ch. D., 588; 51 L. J., Ch. 521.) So also subsequent creditors may upset a prior voluntary settlement if they can show that their money has gone to pay off creditors, who were creditors at the time of the settlement, and who might, therefore, have called it in question. In other words they are allowed to stand in their shoes. (Freeman v. Pope, L. R., 5, Ch. 538.)

Solicitor for voluntary settlor should usually point out

to his client that it is not revocable unless power of revocation inserted, but his not doing so will not necessarily enable settlor to come to the court to revoke settlement; it is only a circumstance to be weighed with others, which perhaps together may enable the court to give relief on the ground of accident or mistake.

WILLS.

Prior to 1 *Vict., c.* 26, though will of personalty spoke from date of death, will of realty only spoke from date of making. Also though infant could not make a will of realty infant could of personalty, female at age of 12 and male at age of 15, if proved to be a person of discretion.

Prior to Married Women's Property Act, 1882, will made by a woman during coverture by consent of her husband would not pass property she acquired after his decease. (Noble v. Willock, L. R., 8 C. A., 779.) And it has been held that this is still so, notwithstanding the Married Women's Property Act, 1882. (*Re* Price, Stafford v. Stafford, *Weekly Notes*, 1885, p. 32; *Law Students' Journal*, March, 1885, p. 49.)

Traitors and felons it would appear may make a will.

Gift to a class as joint tenants.—If one of these attest the will, the whole goes to the other members of the class.

Legacy to an attesting witness is rendered valid by a codicil confirming the will attested by other witnesses. If two codicils, and by first one legacy given to one of its attesting witnesses, second codicil attested by other witnesses will not render the legacy valid unless the first codicil is specially mentioned and confirmed.

Dependent relative revocation.—This means revoking one will with intention of giving effect to another one. If this other one cannot have effect given to it, the revocation does not operate.

A revoked will cannot be revived by implication. W a

person makes a will revoking a prior one and then destroys the latter one the first is not revived. This would raise a case of dependent relative revocation if intention was to revive the prior one.

Though a will now speaks from date of death, there may be cases of contrary intention, when it will be otherwise. (See instances, Vol. II., pp. 371, 372.)

General devise, or bequest, will pass property over which testator had general power of appointment, but not property over which he had only a special power, unless will expressed to be made in pursuance of all powers vested in testator, and the gift is wholly or substantially in favour of persons who are objects of the power.

Trust and Mortgage Estates now in the case of persons dying on or after 1st January, 1882, always go to personal representatives. (Conveyancing Act, 1881, sec. 30.) (As to position in other cases see Lord Braybroke v. Inskip and notes in Indermaur's Conveyancing and Equity Cases, 5th edition, p. 40.)

Legal Estate.—If property devised to use of trustees this vests legal estate in them, but otherwise it depends on whether they have any active duties to perform. Under 1 Vict., c. 26 (secs. 30 and 31), if there is no express limitation of the estate to be taken by the trustee, and yet there are purposes which require that he should take some estate, he must take either an estate for life or an estate in fee simple.

Specific legatee takes property subject to any charge naturally existing on it; but he has a right to have it exonerated from any charges created by testator. It is otherwise, however, as regards a bequest of leaseholds since 40 & 41 Vict., c. 34.

(As to construction of testamentary gifts to children, see Vol. II. 390, 391, and also see Viner v. Francis and notes in Indermaur's Conveyancing and Equity Cases, 5th

edition, p. 34; and as to whether legacy vested or contingent, see Pawlett v. Pawlett, Stapleton v. Cheales, and Hanson v. Graham. Ib., pp. 42, 43.)

Next of Kin.—Gift to, creates a joint tenancy in nearest of kin without reference to Statutes of Distribution.

Residuary Devise.—A devise of "the rest of my lands in the parish of A" is not residuary, so that if certain land in that parish was given specifically and that devise is void, that would not pass under the above clause.

Lapse.—1 *Vict. c. 26, sec. 33.*—Effect of child of testator dying leaving issue, is to render the property his absolutely, so that if he has made a will containing a residuary clause, it will pass thereunder; but this rule is not extended to making it pass under a covenant to settle after acquired property entered into by the child of testator on marriage.

Contingency.—When there is a gift of personal property to a legatee on a contingency, on its happening he gets all the intermediate profits, but otherwise, in the case of land, for here, in the meantime, all the rents go to the residuary devisee, or if there is none, to the heir-at-law.

Thellusson Act—Void Accumulation.—Where a direction to accumulate exceeds the period allowed by the Act, the income will, after the expiration of the time allowed, go to the next-of-kin or heir-at-law of the testator according to the nature of the property. (As to this Act, see Griffiths v. Vere and notes in Indermaur's Conveyancing and Equity Cases, 5th edition, p. 22.)

Mortmain.—Refer to instances of gifts held to be void as savouring of realty (Vol. II., 405). Shares and debentures are not an interest in land.*

Legacy to build on land already in mortmain is good.

Legacy to "establish" a charity good, if it can be established without the purchase of land.

* This is not so absolutely stated in Prideaux, but I think on the authority of Attree v. Hawe (9 Ch. D., 337, 47 L. J. Ch., 463), it is so.

Legacy for building, providing some one else gives the land, is good. (Philpott v. St. George's Hospital, 5 H of L. Cases, 338.)

Provision by will to keep in repair a family tomb in churchyard, may be void as against rule as to perpetuities, but it is not a charitable trust, and is therefore not within the Mortmain Act, so that it may be out of realty, but a trust for repair of a monument in the church itself is within the Mortmain Act, and can only be of personalty, but, being a charitable trust, it may be perpetual.

The rule of Howe v. Earl of Dartmouth (see Indermaur's Conveyancing and Equity Cases, 5th edition, p. 106) does not apply, if it appears from the context of the will that the testator intended that the tenant for life should enjoy the property in *specie.*

Tenant for Life.—When residue given to one for life and then to another, during the year that is given executors to wind up estate, tenant for life ordinarily only entitled as income to 3 per cent. on such stock as would have been purchased had unconverted property been properly converted at end of the year, and as to that that is properly invested he gets the whole income thereupon. Any excess of income from unconverted property is deemed *corpus.* (Vol. II., pp. 414, 415.)

Precatory Trusts.—Refer to numerous instances given (Vol. II., pp. 419, 420), of no trust created, and note that in nearly all these cases the true reason is that the subject is not certain.

Charge of Debts.—Where a charge and no express direction who to have power of sale, trustees of whole estate of testator have the power (1 Vict., c. 26, sec. 14), but where not so devised to trustees then executors have such power. Note that an administrator with will annexed is not within this provision. (Re Clay & Tetley, 16 Ch. D. 3; 50 L. J., Ch. 164.)

Devise or trust for payment of debts does not include debts barred by Statutes of Limitation, and with regard to other debts such a devise or trust will not prevent the statute from running after the death of the testator, either as to personal estate or now (since 37 & 38 Vict., c. 57, sec. 10) even as to real estate.

Descent.—Refer to the statement of the general result of the rules of descent as to the order of succession. (Vol. II., 427), Note sec. 4 of the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), providing that where after 14th August, 1884, a person dies without an heir and intestate in respect of any real estate, consisting of incorporeal hereditaments, or of an equitable estate in corporeal hereditaments the same shall escheat as if it were a legal estate in corporeal hereditaments.

Statutes of Distribution.—Refer to various rules given. (Vol. II., pp. 428, 429.) Note that grandchildren of deceased take *per stirpes*, though no one of the prior class living. (Re Ross's Trusts, L. R. 13, Eq. 286.) It is otherwise in the case of nephews and nieces, who only take *per stirpes* if some brother or sister of deceased living.

Particular points to note on the Inland Revenue Act, 1881:

Section 28—Power to deduct debts and funeral expenses.

Section 36—Relief from legacy duty in cases under £300.

Section 38—Certain properties to be charged with legacy duty, particularly donations *mortis causâ*, voluntary dispositions, &c., if death within three months.

Section 41—Cesser of legacy and succession duties at the rate of 1 per cent.

Section 42—Pecuniary legacies under £20 liable to duty.

Plate, furniture, or other things not yielding income, are

not liable to duty while enjoyed by persons who have no right to dispose thereof. (36 George III., c. 52, sec. 13.)

As to Succession Duty generally see Vol. II., 444-458.

Disentailing Assurances.

Different ways in which a base fee may be enlarged into a fee simple absolute:—(*a*) By a new disentailing assurance either with consent of protector, or after his death. (*b*) By acquirement of ultimate remainder in fee. (*c*) By lapse of 12 years from protector's death and taking possession (under sec. 6 of 37 & 39 Vict., c. 57.)

If several protectors, the office goes to the survivor, and if all die, and no provision perpetuating the protectorship, then the tenant for life becomes protector.

It is apprehended that a married woman acquiring an estate tail, on or since 1st January, 1883, may bar entail without husband joining, by force of the Married Women's Property Act, 1882.

Partnership Deeds.

Refer to Precedent No. 1 (Vol. II., p. 644), and study form of deed, and get up outline or idea of some of the chief clauses in an ordinary partnership deed.

Powers of Attorney.

Vendor abroad and his solicitor proposes to execute under power of attorney. Purchaser must have declaration from him to hold money on trust, or have it paid to a joint account, until proved vendor alive at time, unless the power is of the kind referred to in secs. 8 and 9 of the Conveyancing Act, 1882, to which refer.*

Under Conveyancing Act, 1881 (sec. 46), donee of power may execute it in donor's name, or in his own name. Formerly it could only be executed in the principal's name.

* As to sec. 47 of Conveyancing Act, 1881, it is doubtful whether it does more than protect the attorney himself.

A SET OF TEST QUESTIONS

ON

PRIDEAUX'S CONVEYANCING.

(With References after each Question to the Pages in Prideaux (13th edition) where the Answer may be found.

VOLUME I.

1. What is the title to be shown (*a*) to freeholds, (*b*) to leaseholds, on an open contract? As to the latter refer to provisions in the Vendors' and Purchasers' Act, 1874, and Conveyancing Act, 1881. (1-10.)

2. If there is a defect or doubt on the title how should this be noticed in the conditions of sale? (4.)

3. A sells leasehold property which he holds by an underlease. Should the fact of its being thus held be specially disclosed in conditions, and why? (9.)

4. What is now to be assumed between vendor and purchaser by production of last receipt for rent under a lease or underlease? (11.)

(5.) What is the title to be shown to (*a*) tithes, (*b*) enfranchised copyholds, (*c*) allotments under an Enclosure Act? (11, 12.)

6. What is now and what was prior to 8 & 9 Vict., c. 106, the title to be shown to lands which have been exchanged? What is provided with regard to title in the case of lands which have been exchanged under the General Enclosure Act, 1845. (8 & 9 Vict., c. 118.) (12.)

7. Property which is being sold is subject to certain incumbrances which cannot be discharged. What course in such a case may be taken by a vendor under the Conveyancing Act, 1881, to enable him to sell the land free from incumbrances? (13.)

8. Give the ordinary condition that is inserted as to identity of property, and state its exact effect. (14.)

9. What is the effect of a condition requiring the purchaser to send in his requisitions on title by a certain time? (14.)

10. What is the effect of the ordinary condition enabling a vendor to rescind contract, if any objection is made, which he is unable or unwilling to comply with? (15-17.)

11. When it is stipulated that the contract shall be completed by a certain time, what is the rule as to time being of the essence of the contract? (17, 18.)

12. A agrees to purchase and complete by a certain date. Is he liable to pay interest if not completed by that date? What is the ordinary condition inserted on this point, and what is its effect? (And see and consider the recent case of *Re* Gold & Norton's Contract, *Weekly Notes*, 1885, p. 5; *Law Students' Journal*, March, 1885, p. 22.) (18, 19.)

13. What are a purchaser's rights under the Conveyancing Act, 1881, where he does not get the deeds of the property handed over to him? Does it make any difference in such a case that his vendor is a trustee? (20, 21.)

14. To what extent does the ordinary condition as to errors of misdescription in quantity, &c., extend to protect a vendor? Does it make any difference if it can be shown that the purchaser was aware of the actual state and extent of the property? (22-31.)

15. What is the rule as to a vendor bidding at a sale, or having a reserve? Refer to 30 & 31 Vict., c. 48, stating its effect. (32, 33.)

16. What rules are to be observed by trustees in framing

conditions of sale under which they are putting up the property for sale? (34, 35) And see the recent case of Dunn v. Flood, *Law Students' Journal*, Feb., 1885, p. 21.)

17. A agrees to grant a lease of Whiteacre to B, without naming the time from which the lease is to commence to run. Is this a good contract? (81.)

18. A writes to B, offering to sell his house to him for £1000. B writes back, accepting the offer, and adding: "I refer you to my solicitor, who will prepare a proper contract." Do these letters constitute a binding contract? (82, 83.)

19. To what extent, if at all, does a notice to treat, given by a company under the Lands Clauses Act, constitute the relation between the parties of vendor and purchaser? (83.)

20. What is the effect of a part performance on a contract for the sale and purchase of land? To have the effect of overriding the Statute of Frauds, what is necessary? (84-86.)

21. A agrees to sell his house to B. Before completion it is burnt down. Can B in any way gain the benefit of an insurance A had upon the house? (85.)

22. To what extent, if at all, is a defence of the title being doubtful, a good answer to an action for specific performance? (86, 87.)

23. What is now the rule of the court in actions for specific performance, with regard to the defence of the title being a doubtful one? (89.)

24. Conditions of sale stipulate that the title shall commence with a deed dated in 1860. It turns out that this was a deed executed under a power of appointment. Has the purchaser a right to call for the instrument conferring the power? (140.)

25. Where land is conveyed to trustees upon trust for sale, and the trusts of the sale moneys are declared by a separate deed, is there any necessity to abstract the latter deed? Give reasons. (141.)

26. How do you verify the following matters appearing on an abstract:—(*a*) A will, (*b*) fine, (*c*) recovery, (*d*) redemption of land tax, (*e*) intestacy, (*f*) title by force of a private Act of Parliament. (142-145, 148.)

27. What special provisions are contained in the Conveyancing Act, 1882, with reference to deeds executed under powers of attorney? (145, 146.)

28. A and his predecessors in title have been B's tenants for 50 years. Forty years ago, A encroached a piece of land adjoining that comprised in his lease. On the determination of the lease to whom does this particular piece of land belong? (148.)

29. Enumerate some of the chief provisions of the Yorkshire Registries Act, 1884, stating when it came into operation. (152-154.)

30. Within what time should a will affecting land in Middlesex be registered? What is provided by the Vendors' and Purchasers' Act, 1874, with regard to the will not having been registered within the proper time? (155.)

31. Trace shortly the law of judgments as affecting land from the earliest times down to the present day. (155-169.)

32. To what extent is a Crown debt a charge on the debtor's lands? (169-172.)

33. A dies and an action is brought for the administration of his real and personal estate. Can either his trustees or his executors make a title to either his realty or his personalty pending the action, without the consent of the court? (172, 173.)

34. What is the rule as to the admission to copyholds of joint tenants, co-parceners, and tenants in common respectively? (179, 180.)

35. To what extent are acts done by the lord of a manor, who has only a limited interest therein, binding on his successors? (185.)

36. In the case of a compulsory enfranchisement of copy-

holds, what is the effect with regard to (*a*) minerals, (*b*) commonable rights? (186, 187.)

37. To what extent has the Married Women's Property Act, 1882, altered the position of a married woman with regard to holding and disposing of real estate? (189-191).

38. What is the position of an infant who has entered into a contract to purchase lands? (192.)

39. What was formerly the effect of conviction for felony on real and personal estate possessed by the convict either legally or equitably? What is the law on this subject now? (195-197.) Can a convict make a will? (Vol. II. p. 363.)

40. To what extent may the following hold land: (*a*) a corporation; (*b*) a company registered under the Companies' Act, 1862; (*c*) a company formed for the purpose of promoting art or science not involving gain to its members? (197.)

41. Where trustees are selling under a power of sale at the request of the tenant for life, what obligation is the tenant for life under with regard to covenants for title? (201.)

42. A in 1850 bought the fee simple of certain land and covenanted not to build on it. B in 1881 purchased the land and has commenced to build. Can he be restrained from so doing? (202.)

43. What are the expenses to be borne by a vendor and purchaser respectively on a contract for the sale and purchase of land? (212, 213.)

44. What practical difference is there in the extent of the covenants for title entered into by vendor and mortgagor on a sale and mortgage respectively? Give reason for the difference. (465, 466.)

45. What powers as to insurance are conferred by the Conveyancing Act, 1881, on mortgagees, and are they sufficient without the insertion of any express provisions on the point? (466, 467.)

46. How do you effect an equitable mortgage of land which has been registered under the Land Transfer Act, 1875? (469.)

47. Explain shortly the doctrine of Consolidation of Mortgages, and the enactment thereon contained in the Conveyancing Act, 1881. (470, 471.)

48. Is a mortgagor in possession justified in cutting timber or in taking the crops on the mortgaged property? (474.)

49. What powers of sale are conferred on mortgagees by the Conveyancing Act, 1881? Can these powers be safely relied on, or should express powers be inserted? (476-479.)

50. What rights of cutting timber are now by the Conveyancing Act, 1881, conferred on mortgagees in possession? (485.)

51. When a mortgagee takes possession, what is the rule as between him and the mortgagor as to the taking of annual rests? (485, 486.)

52. Within what time must an action be brought on a covenant for payment contained in a mortgage deed? (487.)

53. A mortgagee has been in possession, and has given no acknowledgment of title for more than 12 years. For nearly all the time, however, the mortgagor's representative has been a person under disability. Does this extend the time for redemption? When the right of redemption has once been barred, can a subsequent acknowledgment revive it? (490.)

54. In what respect does the Act of 40 & 41 Vict., c. 34, amend (*a*) 17 & 18 Vict., c. 113; (*b*) 30 & 31 Vict., c. 69? (493-495.)

55. A third mortgagee advanced his money without notice of the second mortgage, and shortly afterwards the mortgagor paid off the first mortgage. Can the third

mortgagee then, by getting the first to convey the legal estate to him, improve his position? (500.)

56. State shortly the rules laid down by the Conveyancing Act, 1882, as to notice. (506.)

57. A mortgagee in fee dies intestate. The mortgagor (*a*) pays the mortgage money himself; (*b*) gets some one to take a transfer. Who would convey and transfer respectively. (517.)

58. To what bills of sale does the Act of 1882 apply? State shortly the most prominent features of difference between the Acts of 1878 and 1882. (694-703.)

59. When does a mortgage of premises, with fixtures thereon, require a registration as a bill of sale? (704, 705.)

60. Give an instance of (*a*) an insufficient setting forth of the consideration in a bill of sale; (*b*) an insufficient description of grantor. (707, 708.)

VOLUME II.

61. What notice is required to determine the tenancy of (*a*) a house in London; (*b*) a farm? (2.)

62. A person enters into possession of premises under an executory agreement for a lease. What was formerly considered his position, and what now according to the recent decision of Walsh v. Lonsdale? (3.)

63. What is the effect of a covenant by a landlord in a lease that he will not turn his tenant out so long as he pays his rent regularly? (4.)

64. When can a landlord distrain on goods his tenant has removed from the premises? On this point what was decided by the recent case of Gray v. Stait? (5.)

65. What are "usual covenants" in the lease of a dwelling-house? With regard to the tenant's covenant to

pay rent, rates, taxes, &c., does the addition of the word "assessments" make any difference in his position? (10, 11.)

66. What are the obligations of landlord and tenant respectively with regard to repairs, the lease containing no covenant on either side upon the point? (11, 14.)

67. State generally the effect of lessee's covenant in a lease, not to assign without licence. (15, 16.)

68. Under the ordinary conditions of re-entry contained in a lease, must the landlord, before entry, make a demand for his rent? What does the Common Law Procedure Act, 1852, provide upon this point? (17.)

69. By force of what authority is it that the assignee of a reversion can take advantage of a condition of re-entry inserted in the original lease? (21.)

70. A makes a lease of three houses under one entire rent. He then assignes his reversion in each house to three different persons. What would be the rights of each assignee respectively? (21–23.)

71. What was formerly, and what is now the effect of a merger, or surrender of a reversion upon a previously existing under-lease of the premises? (24.)

72. A tenant in fee simple dies before harvest. If he is intestate, what will be the rights of the heir, and the personal representatives respectively? If he is testate, what will be the rights of the devisee and executor respectively? (31.)

73. Under the Agricultural Holdings Act, 1875, for what improvements is the tenant to be allowed compensation? (34, 35.)

74. What is provided by 12 & 13 Vict., c. 26, with regard to defective leases made under a power? How was this enactment amended by 13 & 14 Vict., c. 17? (38.)

75. State generally the powers of leasing which are conferred on tenants for life, and others standing in a similar position, by the Settled Land Act, 1882. (40.)

76. What difference is there between an express covenant for quiet enjoyment, and the covenant to the same effect which is implied by the use of the word "demise"? (43.)

77. Define a bare trust. Show how how an active trust may become a bare trust. What is the duty of a bare trustee? (143, 175.)

78. When does a power of sale authorise a mortgage of an estate? (149.)

79. What statutory powers have trustees to give receipts? (151.)

80. A power of sale is given to three trustees without any mention of the survivors or survivor. Does this power extend to the survivor? (152, 153.)

81. Irrespective of the Conveyancing Act, 1882, can the assignee or heir of a trustee sell under a trust for sale vested in the trustee? How does the Conveyancing Act, 1881, affect this point? (153, 156.)

82. When can a trustee purchase property of his *cestui que* trust? (157.)

83. Enumerate the principal investments open to trustees to make when the trust instrument is silent on the point. What is the general rule as to the proportion of the value of property that trustees may safely advance on mortgage? (159-165.)

84. What is a sufficient acceptance of a trust? If the trustee is also executor will proving the will amount to such an acceptance? (166.)

85. What provision is contained in the Conveyancing Act, 1881, for facilitating the retirement of trustees? (169, 170.)

86. When is a trustee justified in paying money into court under the Trustee Relief Act (10 & 11 Vict., c. 96)? Mention some cases in which it has specially been decided that the Act cannot be taken advantage of. (173, 174.)

87. When, as between vendor and purchaser, will there be a presumption of reconveyance of the legal estate? Give an instance. (177, 178.)

88. What difference is there in the rights of a vested and a contingent remainder-man respectively to call upon a tenant for life to produce to him the title deeds of the estate? (178, 179.)

89. A, B, and C are trustees, and of these A is a solicitor. Can he be appointed to act for his co-trustees and make his charges, and is there any difference on this point between conveyancing and litigious business? (180.)

90. Compare the relative positions with regard to acquirement of property by married women under the provisions of the Acts of 1870 and 1882 respectively? (182-191.)

91. Does curtesy attach to (*a*) property of which wife was a joint tenant; (*b*) an equity of redemption; (*c*) lands held by the wife to her separate use; (*d*) lands of which the wife was tenant in tail? (186, 187.)

92. What is the wife's equity to a settlement? How might it be released? What bearing has the Married Women's Property Act, 1882, with regard to it? (191-193.)

93. Explain the effect as regards a married woman of the clause against anticipation. Refer to the case of Robinson *v.* Wheelwright and state how the decision in that case has been affected by the Conveyancing Act, 1881, sec. 39. (197.)

94. What was formerly the position when a married woman was appointed executrix of a will, and what now, since the Married Women's Property Act, 1882? (204.)

95. Husband and wife are judicially separated. During the separation the wife becomes entitled to certain personal property, and then dies intestate, leaving surviving her husband and two children. Who takes the property? (208.)

96. What powers are given to the Divorce Court, (*a*) of making a settlement when there is none; and (*b*) of *rectifying* or altering an existing settlement? (209, 210.)

97. To what extent is a settlement on a man until bankruptcy or alienation good? (212, 213.)

98. State the provision of Section 43 of the Conveyancing Act 1881, with regard to the allowance by trustee of the income of the trust property for the maintenance of an infant. On this enactment what was decided by the recent case of *Re* Dickson, Hill *v.* Grant? (*Law Students' Journal*, January, 1885, p. 4; *Weekly Notes*, 1884, p. 235.)

99. Does a covenant to settle after acquired property apply to, (*a*) reversionary property coming to wife after marriage; (*b*) any property which she had in reversion at the time of the marriage, but which falls into possession during the marriage? Does it operate as an execution of a general power of appointment? (217, 219.)

100. State generally the powers of sale conferred by the Settled Land Act, 1882. (221, 222.)

101. With regard to land, subject to a trust for sale, state shortly the provisions of the Settled Land Act 1882 (Section 63), as amended by Section 7 of the Settled Land Act 1884. (225.)

102. A is possessed of leasehold property subject to rent and covenants, and makes a settlement of it without consideration on B. Can B's rights be possibly called in question under either 13 Eliz., c. 5, or 27 Eliz, c. 4? (230, 233.)

103. What substantial difference is there between a voluntary declaration of trust and a voluntary covenant to assign or transfer any property? (235, 236.)

104. Is there any absolute duty cast upon a solicitor who prepares a voluntary settlement to point out to his client the fact that it is an irrevocable instrument unless a power of revocation is inserted therein? (236, 237.)

105. A married woman makes a will with the consent of her husband, and such will contains a residuary clause. Will this operate to pass property that she acquires when she becomes a widow? (363.)

106. Gift to A, B, and C as joint tenants. A is an attesting witness to the will. What is the result? (365.)

107. Legacy to A, who is an attesting witness to the will. Subsequently testator makes a codicil, which is attested by two other witnesses. Will A get his legacy? (365.)

108. What do you understand by a "dependent relative revocation?" (368.)

109. Give an instance of a general devise, which will only operate to pass property which the testator was then possessed of, and not property which he subsequently acquired. (371.)

110. What was formerly, and what is now, under the Conveyancing Act, 1881, the rule as to the devolution of trust and mortgaged estates, on a trustee's or mortgagee's death? (376, 377.)

111. What is the rule as to when on a devise to trustees they take the legal estate? (379.)

112. What is provided by the 30th and 31st sections of the Wills' Act, as to what estate trustees take under a will which does not expressly deal with the point? (382, 383.)

113. Illustrate the difference between a gift to next-of-kin, and to next-of-kin according to the statutes of distribution? (391, 392.)

114. Give some instances of bequests to charities held to be void under the Mortmain Act, as savouring of realty. (405, 406.)

115. Would the following bequests or either of them be good:—(*a*) gift of £1000 to repair a certain museum; (*b*) gift of £1000 towards building a museum, if within one year land should be obtained for that purpose? (407, 409.)

116. When has an executor by statute power to sell his testator's freeholds? Does this apply to an administrator with the will annexed? (422-424.)

117. Does a devise or bequest for payment of debts pre-

vent the Statute of Limitations barring such debts? Would such a devise or bequest apply to statute barred debts? (426.)

118. When does the owner of a base fee by force of time acquire an absolute fee simple? (582.)

119. Enumerate shortly some of the most usual clauses in a partnership deed? (644-649.)

120. In what way does the Conveyancing Act 1882, secs. 8 and 9, alter the law with regard to powers of attorney? (712, 713.)

EPITOMES OF STATUTES.

37 & 38 VICT., C. 78.

The Vendors' and Purchasers' Act, 1874.

(*Commencement of Act, 7th August,* 1874.)

Sec. 1.—Forty years substituted for 60 years as the root of title, except in those cases in which formerly an earlier title than 60 years required.

Sec. 2.—(1.) Intended lessee or assign of leaseholds not to be entitled to call for title to freehold.

(2.) Recitals, &c., in deeds and other instruments 20 years old, to be sufficient evidence of what is stated in them.

(3.) Though vendor unable to supply legal covenant for production of deeds, this not to be an objection to title if, on completion, purchaser would have an equitable right to production.

(4.) Covenant for production of deeds to be at purchaser's expense, but vendor to bear expense of perusal and examination.

(5.) Vendor retaining any part of estate to be entitled to retain title deeds.

Secs. 4 and 5.—Sec. 4 was repealed by Conveyancing Act, 1881 (sec. 30, sub-sec. 2). Sec. 5 was repealed by the Land Transfer Act, 1875 (sec. 48), and the substitutionary provision contained in that Statute was itself repealed by Conveyancing Act, 1881 (sec. 30, sub-sec. 2). The wider provisions of sec. 30 (sub-sec. 1) of the Conveyancing Act, 1881, now stands in the place of both enactments.

Sec. 6.—Married woman, who is a bare trustee of freeholds or copyholds, may convey as if a *feme sole*.

Sec. 7.—This section abolished "tacking," but was repealed by the Land Transfer Act, 1875 (sec. 129). (Tacking therefore did not exist between 7th August, 1874, and 1st January, 1876.)

Sec. 8.—Where will of land in Middlesex or Yorkshire not registered within time allowed, an assurance to a purchaser or mortgagee by the devisee, or any one deriving title under him, shall, if registered before, take precedence of, and prevail over any assurance from testator's heir-at-law.

Sec. 9.—Vendor or purchaser may obtain decision of judge in chambers (Chancery Div.) by originating summons, on any point arising as to requisitions or objections, &c., and not being a question affecting the existence or validity of the contract.

NOTES.—As to sec. 1, a case in which more than 40 years' title would be required would be an advowson, in which case the title to be shewn is for three successive adverse incumbencies or if they do not together amount to so much, then 60 years, but in no case more than 100 years. As to sec. 2, (1) see now Conveyancing Act, 1881 (sec. 3, sub-sec. 1); as to sec. 2, (2) note case of Bolton v. London School Board (7 Ch. D., 766; 47 L. J., Ch. 461), in which case it was held that by a recital in a deed 20 years old to the effect that vendor was seised in fee, the purchaser was precluded from calling for a full 40 years' title. See also hereon Conveyancing Act, 1881, sec. 3, sub-sec. 3, infra. As to the insufficiency of the repealed sec. 4 see Re Spradbery's mortgage (14 Ch. D., 514; 49 L. J., Ch. 623).

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44 & 45 VICT., C. 41.

The Conveyancing and Law of Property Act, 1881.

(*Commencement of Act*, 1*st January*, 1882.)

(*Part I. is Preliminary.*)

Part II., Sales and other Transactions.

Sec. 3.—(1.) Under a contract to sell and assign a term

of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where copyhold or customary property has been enfranchised, purchaser to have no right to call for the title to make the enfranchisement.

(3.) A purchaser not to require any abstract or copy of any instrument affecting title prior to time prescribed by law, or agreement, for commencement of the title, even although the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to purchaser; and no prior enquiry to be allowed, and recitals as to prior title to be presumed correct.

(4.) Where land sold is held by lease (not including under-lease), purchaser shall assume—unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent, shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and on production of the receipt for the last payment of rent shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion of the purchase, and further that all rent due under every superior lease, and all covenants, &c., of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses

of all journeys incidental to such production or inspection and all other expenses relating thereto, and all attested, stamped, office, or other copies thereof shall be borne by the purchaser; and where the vender retains possession of any document, the expenses of making any copy, which a purchaser requires, shall be borne by him.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10.) This section applies only to sales made after the commencement of this Act.

Sec. 4.—(1.) Where at the death of any person after the commencement of this Act, there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, his personal representatives shall have power to convey the same, so as to give effect to the contract.

Sec. 5.—Where, in a sale made or completed after commencement of Act, land is sold subject to incumbrance, court may, on application of any person interested, allow payment into court of a sum sufficient to meet such incumbrance, and any costs and interest (not usually exceeding one-tenth of original amount paid in), and thereupon court may declare land to be freed from incumbrances. The court has power afterwards, on notice to persons interested in the fund paid in, to direct transfer thereof.

Sec. 6.—In conveyances made after commencement of Act, it is not to be necessary to insert after the parcels the ordinary "general words" heretofore inserted, but they are to be deemed to be included.

Sec. 7.—(1.) In conveyances, settlements, assignments, mortgages, &c., made after commencement of Act, it shall not be necessary to insert the ordinary covenants for title heretofore inserted, but the ordinary covenants as heretofore

fore inserted shall be deemed to be included. (2 and 3.) Where a conveyance is made by a person by direction of the beneficial owner, such beneficial owner shall be deemed to convey as beneficial owner, and a covenant on his part shall be implied accordingly. Where husband and wife convey, wife to be deemed to convey by direction of husband, and in addition to the covenant implied on the part of the wife, there shall be implied, firstly, a covenant on the part of the husband as the person giving that direction, and, secondly, a covenant on the part of the husband in the same terms as the covenant implied, on the part of the wife.

Sec. 8.—In sales after the commencement of Act, purchaser not to be entitled to require that deed shall be executed in his or her solicitor's presence, but, *at his own cost*, may have same attested by a person appointed by him, who may, if he think fit, be his solicitor.

Sec. 9.—Where a person retains possession of documents and gives to another an acknowledgment in writing of the right of that other to production of those documents and to delivery of copies thereof, or an undertaking in writing for safe custody thereof, such acknowledgment and undertaking respectively, shall have generally the same effect as the ordinary covenants for the purpose heretofore entered into, and shall satisfy any liability to give any such covenants.

Part III., Leases.

Sec. 10.—In leases made after commencement of Act, rent and benefit of lessee's covenants to run with reversion, notwithstanding severance of reversionary estate and recoverable accordingly.

Sec. 11.—Like provision with regard to the obligation on lessor's covenants.

Sec. 12.—Also on any severance of reversion, every condition, right of re-entry, &c., shall be apportioned.

Sec. 13.—On a contract made after the commencement of Act, to grant a lease for a term of years to be derived out of a leasehold interest with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Sec. 14.—(1 and 5.) Lessor not to be able to take advantage of condition of re-entry or forfeiture in lease—except a condition against assigning, underletting, &c., or a condition for forfeiture on bankruptcy, or execution, or, in the case of a mining lease, to a covenant or condition for allowing lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter and inspect the mine and the workings thereof—until he has served on lessee a notice specifying breach, and if capable of remedy, requiring him to remedy same, and lessee fails within a reasonable time to comply therewith. (2.) Where lessor proceeds to enforce any such condition, the Court has power in lessor's action, or in any action brought by lessee, to grant him relief on such terms as it shall think fit. (7.) 22 & 23 Vict., c. 35, secs. 4 to 9, and 23 & 24 Vict., c. 126, sec. 2, are repealed. (8.) This not to affect law relating to re-entry or forfeiture or relief in case of non-payment of rent. (9.) This section applies to leases made either before or after the commencement of the Act, and *shall have effect notwithstanding any stipulation to the contrary.*

Part IV., Mortgages.

Sec. 15.—In all mortgages before or after the Act, and notwithstanding stipulations to the contrary, the mortgagee (not having been in possession) shall on payment, be bound, if required, not only to re-convey, but also to assign mortgage debt, and transfer the mortgaged property to any third person.

Sec. 16.—Mortgagor, whilst he has right of redemption,

to have right on payment of mortgagee's costs to inspect and make copies, &c., of title deeds.

Sec. 17.—Where there are several mortgages, and they or one of them are or is made after the commencement of Act, the doctrine of consolidation, unless the contrary is expressed, is no longer to exist.

Sec. 18.—A mortgagor *in possession*, and a mortgagee *in possession* respectively, shall have power to make leases as follows:—

An agricultural or occupation lease for not exceeding 21 years, and a building lease for not exceeding 99 years, the same to take effect within 12 months from date, to be at the best rent that can be obtained, without fine, to contain a covenant for payment of rent and condition of re-entry on non-payment for not exceeding 30 days, and a counterpart to be executed by lessee, and delivered to lessor; but execution of lease by lessor shall in favour of lessee be sufficient evidence. In the case of building leases, they must be in consideration of houses or buildings erected or improved, &c., or to be erected or improved, &c., within 5 years from date, and a nominal or less rent than that ultimately payable, may be reserved for first 5 years or any part thereof. A mortgagor taking advantage of this section must, within one month of making the lease, deliver to the mortgagee, or where more than one, then to mortgagee first, in priority, a counterpart of the lease duly executed by lessee; but the lessee is not to be concerned to see that this provision is complied with. All this is subject to the express provisions of the mortgage deed, and applies only to mortgages made after commencement of Act, unless otherwise agreed.

Sec. 19.—Mortgagee under deed executed after commencement of Act to have following powers:—*When principal money due*, power of sale in the ordinary way, and also power to appoint a receiver; and, *at any time after*

date of deed, power to insure against fire, and, *when in possession*, power to cut and sell timber, &c., ripe for cutting, and not planted for shelter or ornament, any such sale, however, to be completed within 12 months from making of any contract of sale. These powers may be varied or extended by the mortgage deed.

Sec. 20.—The said power of sale not to be exercised until default in payment after *three* months' notice served on mortgagor, or one of several mortgagors, *or* unless interest in arrear for *two* months, *or* there is breach of some other provision in the mortgage deed.

Secs. 21 and 22.—Mortgagee selling under above power to be able to vest property in purchaser, who is not to be affected, though the sale was not under the circumstances authorised. Money received from sale to be applied in discharging prior incumbrances, then all costs of sale, &c., then the mortgage debt, and then any balance to mortgagor. Mortgagee not to be liable for any involuntary loss on sale. The sale may be by any person for the time being entitled to receive and give a discharge for the mortgage money. Mortgagee's receipts to be sufficient discharge to purchaser.

Sec. 23.—(1, 3 and 4.) With regard to the power to insure, conferred by sec. 19, the insurance shall not exceed amount specified in mortgage deed; or if no amount specified, then shall not exceed two-thirds of the amount that would be required in case of total destruction to restore the property insured. All money received under insurance shall, at the option of mortgagee (and without prejudice to any obligation imposed by law or special contract), be applied in rebuilding, &c., or in or towards discharge of mortgage debt. (2.) The said power to insure is not to apply where there is a declaration in the mortgage that no insurance is required, or where mortgagor keeps up insurance in accordance with the mortgage deed,

or where the mortgage deed contains no covenant as to insurance, but mortgagor insures to the amount which the mortgagee is authorized to insure for.

Sec. 24.—(1 to 5.) The power to appoint a receiver, conferred by sec. 19, shall not be exercised until mortgagee has become entitled to exercise power of sale given by Act. Then he may be appointed by writing under mortgagee's hand, and in like manner he may be removed and a new receiver appointed, and, when appointed, receiver to have all full and necessary powers, and is to be considered the agent of the *mortgagor*, who is to be solely responsible for his acts and defaults, unless the mortgage deed otherwise provides. Any person to be safe in paying to receiver. (6.) Receiver may retain out of moneys received, by way of remuneration and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding 5 per cent. on the gross amount of all moneys received, as is specified in his appointment, and if no rate specified, then at the rate of 5 per cent. on the gross amount, or at such higher rate as the court, on the receiver's application, thinks fit to allow. (8.) Receiver to apply moneys thus :—(*a*) In discharging rents, rates, outgoings, &c. (*b*) In keeping down all annual or other payments, and the interest on any principal sums having priority. (*c*) In payment of his commission, and in payment of any premiums on proper policies of insurance, and in payment of sums for necessary or proper repairs directed in writing by the mortgagee. (*d*) In payment of interest accruing in respect of the principal money due under the mortgage; and (*e*) The residue he shall pay to the person who, but for his possession, would have been entitled to receive the income of the mortgaged property.

Sec. 25.—(1 to 5) In actions brought either before or after the commencement of Act, any person entitled to redeem may have a judgment for sale, instead of for

redemption, or for sale or redemption in alternative, and in any action for foreclosure, sale, or redemption, the court may, on request, direct a sale on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the court to meet expenses of sale, and to secure performance of the terms; but in any action brought by a person interested in the right of redemption and seeking a sale, the court may direct the plaintiff to give security for costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit, respecting the costs of the defendants, or any of them. The court may direct a sale without previously determining the priority of any incumbrancers. (6) 15 & 16 Vict., c. 86, sec. 48, is repealed.

Part V., Statutory Mortgage.

Sec. 26.—(1) A mortgage of freeholds or leaseholds may be by deed expressed to be made by way of statutory mortgage in the form given in Part I. of 3rd schedule to Act, with such variations as necessary. (2) In such a deed there shall be deemed to be included and implied, covenants for repayment of principal, and payment of interest half-yearly, and proviso for redemption on payment.

Sec. 27.—(1 and 2.) A transfer of such a statutory mortgage may be by deed, by way of statutory transfer, in one of the three forms, A, B, and C, given in Part II. of the 3rd schedule to Act, as may be appropriate, with such variations as necessary; and such a transfer shall vest in transferee all powers and rights as if he had been original mortgagee. (3.) If the transfer is in the form B —that is, mortgagor joining in transfer—a covenant shall be implied by him to pay the principal money on the next day fixed for payment of interest, and if not then paid to continue to pay interest.

Sec. 28.—Where there are several mortgagors or covenantors, any implied covenants are to be deemed joint and several, and where several mortgagees or transferrees, any implied covenants to be deemed with them jointly, unless mortgage money expressed to be secured in shares or distinct sums, when covenant to be deemed with each severally in respect of the sum secured to him.

Sec. 29.—A re-conveyance of a statutory mortgage may be by way of statutory re-conveyance, in form given in Part III. of 3rd schedule to Act, with such variations as necessary.

Part VI., Trust and Mortgage Estates on Death.

Sec. 30.—(1 and 3.) In case of death, after commencement of Act, of a trustee or mortgagee, the trust or mortgage estate shall, notwithstanding any testamentary disposition, go to personal representatives, who shall have all proper powers, and shall be deemed, for the purposes of this section, the heirs and assigns of the deceased within the meaning of all trusts and powers. (2.) Sec. 4 of 37 & 38 Vict., c. 78, and sec. 48 of 38 & 39 Vict., c. 87, repealed.

Part VII., Trustees and Executors.

Sec. 31.—When in trusts created before or after the commencement of this Act, any trustee is dead or remains abroad for more than a year, or desires to be discharged, or is unfit or incapable of acting therein, the person or persons (if any) nominated by the instrument creating the trust, and if none, or none able and willing to act, then the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing one, may appoint new trustees or trustee, and so the original number of trustees may be increased or diminished, but, except when only one trustee was originally appointed,

there must be always two trustees to perform the trust. This provision includes the case of a trustee under a will predeceasing testator, and those relative to a continuing trustee include a refusing or retiring trustee. It is subject to any contrary intention, or any terms or provisions in the trust instrument.

Sec. 32.—When in trusts created before or after commencement of Act, there are more than two trustees, if one by deed declares that he is desirous of being discharged, if his co-trustees and such other person, (if any) as is empowered to appoint trustees by deed consent to his discharge, and to the vesting in the co-trustees alone of the trust property, then the trustee, desirious of being discharged shall be deemed to have retired, and shall by the deed be discharged therefrom under this Act, without any new trustee being appointed in his place, This is subject to any contrary intention, or any term or provision in the trust instrument.

Sec. 33.—In appointments by the court of new trustees, any such new trustee shall *as well before* as after the trust property becomes properly vested in him, have all powers, &c., as if he had been originally trustee.

Sec. 34.—In deeds executed after commencement of Act, either appointing a new trustee, or operating to discharge a retiring trustee, a mere declaration that the trust property shall vest in the new trustee or continuing trustee, as the case may be, shall have all the effect of a conveyance or assignment.

Sec. 35.—In trusts created after commencement of Act, and subject to any contrary provision or intention in the instrument, trustees having a power of sale may sell or concur in selling all or any part of the property, subject to prior charges or not, by public auction or private contract, and generally as they think fit.

Sec. 36.—Trustees' receipts for any money, securities,

or other personal property, payable or deliverable to them under their trust, to be a sufficient discharge.

Sec. 37.—In all executorships and trusts existing either before or after commencement of Act, and subject to the provisions or intentions of the trust instrument, executors may pay or allow any debt or claim, on any evidence they think sufficient, and one executor, or two or more trustees acting together, or a sole acting trustee where authorised to act by himself, to have full power to accept composition, or take security for debts, or to allow time, or submit to arbitration, or release or settle debts, &c., provided any such act done in good faith.

Sec. 38.—In executorships and trusts constituted after or created by instruments coming into operation after commencement of Act, powers given to two or more executors or trustees jointly, may, unless contrary expressed, be exercised by survivor or survivors.

Part VIII., Married Women.

Sec. 39.—Notwithstanding a married woman is restrained from anticipation, the court may if it think it fit, where it appears to be for her benefit, by judgment or order with her consent, bind her property.

Sec. 40.—A married woman, whether an infant or not, to have power to appoint an attorney to execute any deed, or do any act which she herself might execute or do.

Part IX., Infants.

Sec. 41.—Where an infant is entitled to a fee simple, or to any leasehold interest, at a rent, the land to be deemed a settled estate within the Settled Estates' Act, 1877.

Sec. 42.—When under an instrument coming into operation after commencement of Act, infant thus entitled, and if a woman, also unmarried, trustees under settlement, or trustees appointed by the court on the application of

guardian or next friend of infant, may enter into and continue in possesion of the land, and shall then have full powers to cut timber in usual course for sale or repairs, to pull down and rebuild houses, &c., and generally manage the property in the same way that infant might, if of full age, and may apply the income in keeping down expenses of management, and at his discretion for maintenance of infant, and shall lay out, invest, and accumulate the residue in trust for infant on attaining 21, or if a woman, married whilst an infant, for her separate use, or if infant dead, in trust for the parties then entitled. These provisions only apply so far as no contrary intention in the instrument under which infant derives the property.

Sec. 43.—Trustee under any instrument operating either before or after commencement of Act to have full discretionary power of applying income for maintenance of any infant either absolutely or contingently entitled, and may for this purpose resort to the accumulations of any past years.

Part X., Rent Charges, &c.

Sec. 44.—Where a person is entitled to a rent charge, or other similar annual payment, under some instrument coming into operation after commencement of Act, he is to have the following powers to recover and enforce it:—(*a*) If in arrear for 21 days, power of distress. (*b*) If in arrear for 40 days, power to enter into possession and take income till satisfaction. (*c*) Or instead, or in addition, power to demise the land to a trustee for a term of years on trust, by way of mortgage, or sale, or demise, of the whole or any part of the term to raise the money to satisfy him. These powers are subject to any contrary provisions or intention in the instrument creating the rent charge.

Sec. 45.—Where there is existing any quit rent, chief rent, rent charge, or other annual sum issuing out of

lands, same may be redeemed by the owner of the land by obtaining a certificate from the copyhold commissioners of amount to be paid for redemption, and then after one month's notice to the person entitled to the rent, paying or tendering the amount certified. The commissioners may then give a final and conclusive certificate that rent is redeemed. This provision does *not* apply to a tithe rent charge, or rent reserved on sale, or lease, or made payable under a grant or license for building purposes, or to any sum or payment issuing out of land not being perpetual.

Part XI., Powers of Attorney.

Sec. 46.—Person executing a deed under a power of attorney may execute either in his own name, or the name of the donor of the power.

Sec. 47.—Attorney not to be liable for any payment made, or other act done by him, *bonâ fide*, under a power without notice of donor's death, lunacy, bankruptcy, or revocation. But this does not affect any right against the person to whom money has been paid.

Sec. 48.—Powers of attorney, on their execution being verified, may be deposited in the Central Office of Supreme Court of Judicature; and any office copy thereof to be sufficient evidence of the contents of the instrument and its deposit there. (General rules of court may be made for the purposes of this section.)

Part XII., Construction and Effect of Deeds, &c.

Sec. 49.—In conveyances, either before or after the Act, the word "Grant" is not to be necessary to convey any property.

Sec. 50.—After commencement of Act, freehold land or a chose in action may be conveyed by one person direct to himself and another, or by a husband to wife, or wife to husband, either alone or jointly.

Sec. 51.—After commencement of Act, to pass fee simple, the words "in fee simple" to be sufficient without word "heirs;" and to create an estate tail, the word "in tail" to be sufficient without the words "heirs of the body;" and to create an estate in tail, male or female, the words "in tail male," or "in tail female," as case may be, to be sufficient.

Sec. 52.—Any person entitled to a power whether coupled with an interest or not may, by deed, release or contract not to exercise it.

Sec. 53.—A deed expressed to be supplemental to another, to be read and to have effect as if endorsed thereon, or as if it contained a full recital thereof.

Secs. 54 and 55.—In deeds executed after commencement of Act, receipt for consideration in the body of deed sufficient without a receipt endorsed; and any receipt, whether in body or endorsed, shall be sufficient evidence of payment to satisfy any subsequent purchaser not having actual notice of non-payment.

Sect. 56.—A solicitor in completing a purchase, &c., need not produce an authority from his client to receive the money, but his production of the deed duly executed, with receipt thereon, to be sufficient.

Sec. 57.—Deeds in the form in 4th schedule to Act, or in like form, or using like expressions, shall be sufficient.

Sec. 58.—Covenants made after commencement of Act, with regard to lands of inheritance, to bind heirs and assigns without mention, and with regard to lands not of inheritance, to bind executors, administrators, and assigns without mention.

Sec. 59.—All ordinary covenants and bonds made after commencement of Act, and including any implied under Act to bind the heirs and real estate, without mention, subject to any contrary expression or intention.

Sec. 60.—Covenant after commencement of Act, and

including any implied by Act, with two or more jointly to enure for the benefit of survivor or survivors, and any other person to whom right to sue devolves, subject to any contrary expression or intention.

Sec. 61.—In mortgages, transfers of mortgages, &c., made after commencement of Act, and subject to any contrary intention expressed in the instrument when money expressed to be advanced on joint account, or where the instrument is made to more persons than one jointly, and not in shares, the money shall be deemed to belong to the mortgagees or transferees, &c., on a joint account as between them and the mortgagor or obligor; and the receipt of the survivors or survivor shall be a complete discharge, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 62.—Where, after commencement of Act, freeholds are conveyed to the use that any person shall have an easement, &c., thereout, it shall operate to vest such easement, &c., in that person.

Sec. 63.—In conveyances, after commencement of Act, and subject to any contrary intention, not necessary to insert "all the estate," &c., clause, as same to be deemed included.

Sec. 64.—In construing any covenant or proviso implied under this Act, words importing singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as case may require.

Part XIII., Long Term.

Sec. 65.—Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land without any trust or right of redemption, and without there being either originally or by release or other means

any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, then the term may be enlarged into a fee simple to be subject, however, to the same trusts, powers, &c., as the term, by the execution of a deed containing a declaration to that effect made by any of the following persons (namely): (*a*) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence; (*b*) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not; (*c*) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not.

Part XIV., Adoption of Act.

Sec. 66.—All persons, whether solicitors, trustees, or the parties concerned themselves, adopting the provisions of the Act to be protected in doing so.

Part XV., Miscellaneous.

Sec. 67.—All notices required by this Act must be in writing, and may be served by being left at a person's last known place of abode or business; or if to be served on a lessee or mortgagee by being left for him on the land or at any house or building comprised in the lease or mortgage, or in case of a mining lease by being left at office or counting-house of the mine, or by sending through the post, registered, directed to the party by name as aforesaid, place of abode, business, or counting-house, provided letter is not returned through the post undelivered.

Sec. 68.—With regard to the Act as to statutory declara-

tions (5 and 6 Wm. IV., c. 62) it may be cited by the short title of The Statutory Declarations Act, 1835, in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Part XVI., Court, Procedure, Orders.

Sec. 69.—(1.) All matters within the jurisdiction of the court under this Act shall be assigned to the Chancery Division. (3.) Every application under the Act, except where otherwise expressed, shall be by summons at chambers. (8.) General rules for purposes of Act to be deemed Rules of Court under sec. 17 of Appellate Jurisdiction Act, 1876 (39 and 40 Vict. c. 59, sec. 17).

Part XVII., Repeals.

Sec. 71.—Statutes 8 & 9 Vict., c. 119, and 23 & 24 Vict., c. 145, sects. 11 to 30, are repealed; but this is not to affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this Act.

Part XVIII. Relates to Ireland.

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I. (*See section* 26 *of Act.*)

Deed of Statutory Mortgage.

This indenture made by way of statutory mortgage, the day of , 1882, between A., of [&c.] of the one part, and M., of [&c.] of the other part. Witnesseth, that in consideration of the

sum of £ now paid to A. by M., of which sum A. hereby acknowledges the receipt, A., as mortgagor and as beneficial owner, hereby conveys to M. all that [&c.] To hold to and to the use of M. in fee simple for securing payment on the day of 1883, of the principal sum of £ , as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness, &c.

*** *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

PART II. (*See section 27 of Act.*)

Deed of Statutory Transfer, Mortgagor not joining.

This indenture made by way of statutory transfer of mortgage, the day of , 1883, between M., of [&c.] of the one part, and T., of [&c.] of the other part, supplemental to an indenture made by way of statutory mortgage, dated the day of , 1882. and made between [&c.] Witnesseth, that in consideration of the sum of £ now paid to M. by T., being the aggregate amount of £ mortgage money, and £ interest due in respect of the said mortgage, of which sum M. hereby acknowledges the receipt, M., as mortgagee, hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

This indenture made by way of statutory transfer of mortgage, the day of , 1883, between A., of [&c.] of the first part, B., of [&c.] of the second part, and C., of [&c.] of the third part, supplemental to an indenture made by way of statutory mortgage, dated the day of , 1882, and made between [&c.] Witnesseth that in consideration of the sum of £ now paid to A. by C., being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum A. hereby acknowledges the receipt, A., as mortgagee, with the concurrence of B., who joins herein as covenantor, hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

This indenture made by way of statutory transfer of mortgage and statutory mortgage, the day of 1883, between A., of

[&c.] of the first part, B., of [&c.] of the second part, and C., of [&c.] of the third part, supplemental to an indenture made by way of statutory mortgage, dated the day of 1882, and made between [&c.] Whereas the principal sum of £ only remains due in respect of the said mortgage as the mortgage money, and no interest is now due and payable thereon. And whereas B. is seized in fee simple of the land comprised in the said mortgage subject to that mortgage. Now this indenture witnesseth that in consideration of the sum of £ now paid to A. by C., of which sum A. hereby acknowledges the receipt, and B. hereby acknowledges the payment and receipt as aforesaid * A., as mortgagee, hereby conveys and transfers to C. the benefit of the said mortgage. And this indenture also witnesseth that for the same consideration A., as mortgagee, and according to his estate, and by direction of B., hereby conveys, and B., as beneficial owner, hereby conveys and confirms to C. All that [&c.] To hold to and to the use of C. in fee simple for securing payment on the day of 1882, of † the sum of £ as the mortgage money with interest thereon, at the rate of [*four*] per centum per annum.

In witness, &c.

[*Or, in case of further advance, after* aforesaid *at* insert*, and also in consideration of the further sum of £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, *and after* of *at † insert*, the sums of £ and £ making together]

*** *Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

PART III. (*See section* 29 *of Act.*)

Deed of Statutory Re-conveyance of Mortgage.

This indenture made by way of statutory re-conveyance of mortgage, the day of , 1884, between C., of [&c.] of the one part, and B., of [&c.] of the other part, supplemental to an indenture made by way of statutory transfer of mortgage, dated the day of , 1883, and made between [&c.] Witnesseth that in consideration of all principal money and interest due under that indenture having been paid, of which principal and interest, C. hereby acknowledges the receipt, C., as mortgagee, hereby conveys to B., all the lands and hereditaments now vested in C. under the said indenture To hold to and to the use of B. in fee simple, discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

*** *Variations as noted above.*

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

(*See Section* 57 *of Act.*)

I.—*Mortgage.*

This indenture of mortgage made the day of , 1882, between A., of [&c.] of the one part, and B., of [&c.], and C., of [&c.] of the other part. Witnesseth that in consideration of the sum of £ paid to A. by B. and C. out of money belonging to them on a joint account, of which sum A. hereby acknowledges the receipt, A. hereby covenants with B. and C. to pay to them on the day of , 1882, the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum, and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the day of , and the day of And this indenture also witnesseth that for the same consideration A., as beneficial owner, hereby conveys to B. and C. All that [&c.] To hold to and to the use of B. and C. in fee simple, subject to the proviso for redemption following (namely) that if A., or any person claiming under him, shall on the day of , 1882, pay to B. and C. the sum of £ and interest thereon, at the rate aforesaid, then B. and C., or the persons claiming under them, will, at the request and cost of A., or the persons claiming under him, re-convey the premises to A., or the persons claiming under him. And A. hereby covenants with B. as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

This indenture made the day of 18 between [*the same parties as the foregoing mortgage*], and supplemental to an indenture of mortgage, dated the day of 18 and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [&c.] Witnesseth that in consideration of the further sum of £ paid to A. by B. and C. out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B.

and C. of the sum of £ and the interest hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

This indenture made the day of 1883 between A., of [&c.] of the first part, B., of [&c.] and C., of [&c.] of the second part. and M., of [&c.] of the third part Whereas by an indenture dated [&c.] and made between [&c.] the land hereinafter mentioned was conveyed by A. to B. and C. in fee simple, by way of mortgage for securing £ and interest and by a supplemental indenture dated [&c.] and made between the same parties those lands were charged by A. with the payment to B. and C. of the further sum of £ and interest thereon And whereas a principal sum of £ remains due under the two before-mentioned indentures, but all interest thereon has been paid as B. and C. hereby acknowledge. Now this indenture witnesseth that in consideration of the sum of £ paid by the direction of A. to B. and C., and of the sum of £ paid to A., those two sums making together the total sum of £ paid by M. for the purchase of the fee simple of the lands hereinafter mentioned, of which sum of £ B. and C. hereby acknowledge the receipt, and of which total sum of £ A. hereby acknowledges the payment and receipt in manner before-mentioned, B. and C. as mortgagees, and by the direction of A., as beneficial owner, hereby convey, and A., as beneficial owner, hereby conveys and confirms to M. All that [&c.] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures. [*Add, if required,* and A. hereby acknowledges the right of M. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

In witness, &c.

[The Schedule above referred to.]

[*To contain list of documents retained by A.*]

IV.—*Marriage Settlement.*

This indenture made the day of 1882 between John M. of [&c.] of the first part, Jane S. of [&c.] of the second part, and X. of [&c.] and Y. of [&c.] of the third part Witnesseth that in consideration of the intended marriage, between John M.

and Jane S., John M. as settlor, hereby conveys to X. and Y. all that [&c.] To hold to X. and Y. in fee simple to the use of John M. in fee simple until the marriage and after the marriage to the use of John M. during his life without impeachment of waste, with remainder after his death, to the use that Jane S. if she survives him may receive during the rest of her life a yearly jointure rent-charge of £ to commence from his death, and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living, or if not a proportional part to be paid at her death and subject to the before-mentioned rent-charge to the use of X. and Y., for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of John M. and Jane S, successively according to seniority in tail male with remainder [*insert here, if thought desirable*, to the use of the same first, and other sons, successively according to seniority in tail with remainder] to the use of all the daughters of John M. and Jane S., in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of John M., in fee simple. [*Insert trusts of term of* 500 *years for raising portions: also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange and partition, and other powers and provisions, if and as desired.*]

In witness, &c,

NOTES.—The general scope and design of this Act is to shorten the instruments at present used in conveyancing. This idea we see running throughout the whole Act, which does away with the necessity of the ordinary covenants for title, general words, all the estate clause, &c., &c. Again—various powers usually inserted in certain instruments are to be deemed inserted, and short forms of conveyances, mortgages, &c., are given.

But beyond this, the Act contains several radical alterations to apply in all cases, and we would specially call students' attention to sections 13, 14, 15, 16, 17, 18, 39, 46, 47, 50, 51, 54, 55 and 56. As to sec. 17, though it practically abolishes, *in the future*, the doctrine of consolidation of mortgages unless the contrary is agreed to, yet a proper knowledge of that doctrine is still essential, and the student is referred to Vint v. Padgett, and notes in Indermaur's Conveyancing and Equity Cases, 5th edition, 85-88.

The student will observe that certain new provisions are made in the future to take the place of certain old ones. Secs. 4 to 9 of Lord

St. Leonard's Act (22 & 23 Vict., c. 35), as to relief against breaches of covenants to insure and some other points, pass away, as also do secs. 11 to 30 of Lord Cranworth's Act (24 & 23 Vict., c. 145), as to mortgagees' powers, maintenance of infants, trustees' receipts, executors compounding, &c. With regard to the repeal of the above-mentioned sections of 23 & 24 Vict., c. 145, it will be observed that sec. 19 of the new Act only applies to mortgage deeds executed after the commencement of the Act; sec. 71 is no doubt meant to reserve the former position as to mortgages before the commencement of the new Act. As to sec. 43, with regard to maintenance, reference should be made to the important recent case of *in re* Dickson, Hill v. Grant, W. N., 1884, p. 235; *L. S. J.*, January, 1885, p. 4.

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45 & 46 VICT., C. 38.

The Settled Land Act, 1882.

(*Commencement of Act*, 1*st January*, 1883.)

Sec. 2.—Any deed, will, agreement, &c., whether made or passed before or after the commencement of this Act, whereby lands stand limited by way of succession, to be deemed a settlement for the purposes of this Act.

Secs. 3, 4.—A tenant for life is to have a general power of selling or exchanging the settled estate at the best price or consideration that can reasonably be obtained, either by public auction or private contract, together or in lots, with power to fix reserved biddings, and buy in at auction. Settled land in England must not, however, be exchanged for land out of England.

Secs. 6, 7.—A tenant for life is to have a power of leasing as follows: a building lease not exceeding 99 years, a mining lease not exceeding 60 years, and any other lease not exceeding 21 years; such leases to be by deed, to take effect within 12 months from date, at the best rent that can reasonably be obtained, to contain a covenant for payment of rent, and condition of re-entry, on nonpayment within a

time not exceeding 30 days, and a counterpart to be executed by lessee; but the execution of the lease by the tenant for life to be sufficient evidence of this.

Secs. 8 to 11.—Every building lease to be partly in consideration of the erection or improvements of buildings; a nominal rent may be reserved for first five years. In a mining lease, the rent may be made ascertainable, or to vary according to acreage worked, or minerals obtained. In both mining and building leases, on application to the court, and shewing that it is customary to do so, or that it is difficult to make leases otherwise, the court may authorise the granting of leases for longer terms, or even in perpetuity, on conditions expressed in the lease. With regard to any rent from a mining lease, there shall always be set aside as capital money part of the rent, viz., when the tenant for life is impeachable for waste, three-fourths, and otherwise one-fourth thereof.

Sec. 14.—Tenant for life of copyhold or customary property may grant licences to tenants to make any such leases as the tenant for life might make of freeholds; such license may fix the annual value, whereon fines and other customary payments are to be assessed, and it is always to be entered on the court rolls of the manor.

Sec. 15.—That before detailed powers of selling and leasing not to extend to the principal mansion house, or demesnes usually held therewith *unless the consent of the trustees of the settlement, or an order of the Court is obtained.*

Sec. 16.—On a sale or grant for building purposes, under foregoing provisions, the tenant for life, for the general benefit of the residents on the settled land, or any part thereof, may appropriate portions thereof for streets, roads, paths, squares, gardens, or other open spaces, and may execute any deed necessary for vesting them in any trustees, or any company or public body.

Sec. 17.—Any sale or exchange may be of land, apart

from minerals, &c., and any mining lease may be of all or any of the minerals, &c.

Sec. 18.—Any money required for enfranchisement, or for equality of exchange or partition, may be raised by the tenant for life by mortgage of the settled estate, in fee simple, or for other estate, and the sum raised shall be capital money.

Sec. 20 (sub-sec. 3).—As to copyholds, any deed in manner provided by this Act to be sufficient without surrender, and thereupon admittance to be made; but the steward may require to be produced so much of the settlement as shows the title of the persons executing the deed, and the same may, if the steward thinks fit, be entered on the court rolls.

Secs. 21 to 23.—Capital money arising under this Act in addition to the particular purpose for which it is raised, may be applied as follows: In investment on Government or other securities in which trustees may invest either by law or under the settlement, or in purchase of railway debenture stock in Great Britain or Ireland, provided it has for the ten preceding years paid a dividend on its ordinary stock; in discharge of incumbrances, land tax, &c., on the settled estate; in payment for any improvement authorised by this Act (see sec. 25), or for equality of exchange or partition; in purchase of the seignory, reversion, or freehold in fee of any part of the settled estate; in the purchase of lands or mines or minerals in fee or of customary or copyhold tenure, or of leaseholds having not less than 60 years to run (but capital money arising from land in England not to be applied in purchase of land out of England, unless specially allowed by the settlement—sec. 23); in payment to any person becoming absolutely entitled; in payment of any costs or expenses in connection with any of the powers under this Act; and in any other mode in which money produced by the

exercise of a power of sale in the settlement is applicable thereunder.

Sec. 22.—For the purpose of being invested or applied as specified in last section, capital money to be paid to the trustees of the settlement, or into court at option of tenant for life, and investment on application to be according to direction of tenant for life, or in default at trustees' discretion, subject to any consent or direction in the settlement. Any capital money before investment or application to still be deemed and treated as land, and the income of any capital money is to go as the income of the land would have gone under the settlement.

Sec. 25.—This section enumerates what shall be improvements authorized by the Act for the application of trust money. No less than twenty different kinds are given of which we mention the following: Draining; warping; irrigation; inclosing; reclaiming; building farmhouses, farm cottages or saw mills; or construction of reservoirs, tramways, railways, canals, docks, jetties, piers, market places, streets, roads, &c.

Sec. 26.—A tenant for life desirous of applying capital money in improvements is to submit a scheme to the trustees of the settlement or the court showing proposed expenditure. Where the capital money is in trustees hands a certificate of the land commissioners (see sec. 48) that the works are properly executed, and what amount is properly payable thereunder is necessary, or instead thereof a like certificate of a competent engineer or practical surveyor nominated by the trustees and approved by the commissioners, or instead of either an order of the court authorising the expenditure. Where the capital money is in court, then a scheme has first to be approved by the court, and then money to be paid on an order of the court, which will be granted on either of such certificates as already mentioned, or on such other evidence as the court thinks fit.

Sec. 29.—In executing, maintaining, or repairing any improvement authorised by this Act, the tenant for life or any other person not to be liable for waste, and may cut down and use timber and other trees not planted or left standing for shelter or ornament.

Secs. 30, 32, 33.—The improvements allowed by this Act are to be also allowed, and to be deemed included in the improvement of Land Act, 1864 (27 & 28 Vict., c. 114, sec. 9), and in the Land Clauses Consolidation Act, 1845 (8 & 9 Vict., c. 18), 1860 (23 & 24 Vict., c. 106), and 1869 (32 & 33 Vict., c. 18), and in the Settled Estates Act, 1877 (40 & 41 Vict., c. 18), and in all settlements in which money is in the hands of trustees to be laid out in the purchase of lands.

Sec. 31.—In the same way that the tenant for life may make leases and sales, so also he may contract therefor, and may revoke such contracts and enter into fresh ones, as if he were absolute owner, and every contract shall be enforceable in favor of, or against successors.

Sec. 35.—A tenant for life, though impeachable for waste, may, with the consent of the trustees of the settlement, or on an order of the court, cut and sell timber ripe and fit for cutting; but three-fourths of the net proceeds to be set aside as capital moneys, and the residue only to go as rents or profits.

Sec. 36.—The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary oppositions, or other proceeding taken or proposed to be taken for protection of settled land, or for any action, or proceeding for recovery of such land, and direct the costs in connection therewith to be paid out of the settled estate. (Note.—This section is instead of sec. 17 of 40 & 41 Vict., c. 18, which is repealed. See post, sec. 64.)

Sec. 37.—Heirlooms that is—personal chattels settled on trust to devolve with the land, may, by an order of the

court, be sold by tenant for life, but the proceeds to be capital moneys, to be dealt with as before authorised, or to be invested in the purchase of other chattels to devolve in like manner.

Secs. 38, 39.—In default of trustees under a settlement, the court may, on application of tenant for life, appoint new trustees, and they, or the survivors, or the personal representatives of the survivor shall be deemed the trustees of the settlement; but no capital money shall be paid to less than two trustees unless the settlement specially authorizes it being paid to one only.

Secs. 40, 43.—Trustees' receipts to be full and sufficient discharges; each trustee to be liable for his own acts only, and not where he has only joined for conformity; and generally they are protected where they act *bonâ fide* in the exercise of the powers conferred on them by this Act. They are to have all the powers of reimbursing themselves expenses.

Sec. 44.—In case of difference arising between tenant for life and trustees of settlement respecting any powers, or any matters under this Act, the court may give directions respecting the matter in difference, and the costs of the application.

Sec. 45.—Tenant for life intending to exercise any of the powers conferred by this Act shall send by registered post, not less than one month before he acts, a notice thereof to each trustee at his usual place of abode, and if he knows the trustees' solicitor then to such solicitor also at his usual place of business. There must not at the time of this notice be less than two trustees, unless allowed by the settlement. A person dealing in good faith with the tenant for life is not concerned to enquire as to whether such notice has been given. (See amendment of this sec. by the Settled Land Act, 1884, 47 & 48, 8 Vict. c. 18, sec. 5, post, p. 106.)

Sec. 46.—This section contains regulations respecting payments into court, applications, &c., of which the following are the chief:—Matters under the Act are assigned to the Chancery Division; payment into court to be an effectual exoneration; applications to be to the court by petition, or by summons in chambers; on an application by trustees of settlement notice to be served in first instance on tenant for life, and then on such persons as the court shall think fit; general rules under the Act may be made, and to be deemed rules of court; the county court of the district where the settled estate is situate, or from where the capital money arises, or in connexion with which personal chattels are settled, is to have jurisdiction under this Act, where capital money, or securities in which it is invested, or the value of the settled estate does not exceed £500, and the annual rateable value of the settled estate does not exceed £30 per annum.

Sec. 47.—Any costs, charges, or expenses may be directed by the court to be paid out of income, or out of capital money, or raised by means of sale or mortgage out of the settled estate.

Secs. 48, 49.—The Commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall by virtue of this Act become and be styled, the *Land Commissioners for England.* Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office, and office copies shall be delivered out on application, and shall be sufficient evidence thereof.

Secs. 50 to 52.—The powers under this Act of a tenant for life, are not capable of assignment or release by express act, or by operation of law, but remain exerciseable by tenant for life except that if tenant for life has assigned his

estate for value this shall not operate to assignees' prejudice, and his rights shall not be affected without his consent, but, if the assignee is not in possession, tenant for life still to have the power of making leases. Any contract by tenant for life not to exercise his powers under this Act is void, and any prohibition in the settlement or provision for forfeiture on exercise of such powers also void.

Sec. 53.—Tenant for life, in exercising powers under this Act, to have the duties and liabilities of a trustee for all parties interested in estate.

Sec. 54.—On all sales, exchanges, leases, &c., under this Act, persons dealing *bona fide* to be conclusively taken to have given the best price, consideration, or rent, and to have complied with all the requisitions of this Act.

Sec. 56.—All other powers subsisting under any settlement or statute, or otherwise exerciseable by tenant for life or his trustees to be still existing, and the powers conferred by this Act to be cumulative, but, in case of any conflict, provisions of this Act to prevail; and. accordingly, the consent of tenant for life shall, by virtue of this Act, be necessary to the exercise by trustees, or other persons, of any power conferred by the settlement exerciseable for any purpose provided for in this Act. Should any doubts arise on matters within this section the court may, on application of the trustees, or the tenant for life, or other person interested, give its decision, opinion, advice, or direction thereon.

Sec. 57.—This Act not to prevent a settlement conferring larger or additional powers than those contained in Act.

Sec. 58.—Each person, as follows, shall, when the estate or interest of each of them is in possession, have the powers of, and be deemed for the purpose of the Act to be a tenant for life, viz:—(1) Any tenant in tail, except a tenant in tail of land purchased by money, provided by Parliament in consideration of public services, and he being restrained

from barring his entail, and the reversion being in the Crown. (2) A tenant in fee simple with an executory limitation over. (3) The owner of a base fee. (4, 5, and 6) A tenant for years terminable on life, or a tenant *pur autre vie* not holding merely under a lease at rent. (7) A tenant in tail after possibility of issue extinct. (8) A tenant by curtesy.

Sec. 59, 60.—A person in his own right entitled to land, being an infant, for the purposes of this Act the land to be deemed settled land, and the infant tenant for life thereof. When an infant is tenant for life, the powers may be exercised by the trnstees of the settlement, and, if none, then by such person and in such manner, as the Court on the application of testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Sec. 61.—When a married woman is tenant for life and is entitled for her separate use, then she without her husband, to have the powers of a tenant for life. If entitled, not for her separate use, then she and her husband together to have the powers. A restraint on anticipation not to prevent married woman's exercise of the powers of this Act.

Sec. 62.—When tenant for life, a lunatic, so found by inquisition, his committee, under order of Chancellor or other person intrusted by Queen's Sign Manual, with the care and commitment of the custody of the possessions and estates of lunatics, may exercise the powers of this Act.

Sec. 63.—Land subject to a trust for sale, and the application and disposal of the money or the income until sale, or any part of the money for the benefit of one or more for life shall be deemed settled land; and the person beneficially entitled for the time being to the income shall be deemed tenant for life; and the persons (if any) who are under the

settlement trustees for sale of the settled land, or have power to consent to the sale, or if no such trustees then the persons (if any), who are by the settlement declared to be trustees thereof for purposes of this Act, are for the purpose of this Act, trustees of the settlement. (See amendment of this sec. by the Settled Land Act, 1884 (sec. 7), post, p. 107.)

Sec. 64.—The following enactments, except as regards anything done thereunder before commencement of Act, are repealed, viz.:—23 & 24 Vict., c. 145, Parts I. and IV. being the residue of the Act which the Conveyancing Act 1881, did not repeal; 27 & 28 Vict., c. 114, secs. 17 & 18, and sec. 21, from "either by a party" to "benefice or" inclusive; and from, "or, if the land owner," to "minor or minors" inclusive; and, "or circumstances," twice. Except as regards Scotland, 40 & 41 Vict., c. 18, sec. 17.

NOTES.—This Act forms a most important extension of the powers of limited owners of land, and it must be firstly observed that it applies, after its commencement, to all settlements of whatever date and by sec. 56, the powers conferred by other Acts are still to remain. This, therefore, leaves intact 40 & 41 Vict., c. 18, except sec. 17 thereof, which was not very important, and which is now replaced by sec. 36 of this Act. I may, perhaps, usefully point to a few special provisions in this Act. The provisions as to leases in secs. 6 to 14 should be carefully compared with those contained in 40 & 41 Vict., c. 18. The wide powers of selling and leasing are not, as regards the principal mansion house, &c., to be exercised in a perfectly uncontrolled manner by the tenant for life (sec. 15); capital money appears to be thoroughly protected, but the tenant for life has his choice of investments (sec. 22), and these powers of investment are very wide (sec. 21), and the tenant for life has very ample opportunities afforded him of improving the estate (sec. 25), subject, however, to what appear to be fair restrictions (sec. 26). Not only is an actual lease or sale by the tenant for life binding, but contracts for the same are so also (sec. 31). A difficulty that would have existed with regard to improvements, when the tenant for life is impeachable for waste, is overcome by sec. 35. Before the tenant for life can proceed to exercise his great powers, certain notices on his part are necessary (sec. 45). It should be

specially observed that contracts not to exercise his powers, or conditions against his exercising them, are worthless as against the tenant for life (secs. 50, 51, 52).

In considering this Act, the student must at the same time now study the Settled Land Act, 1884 (post, p. 106), which is to be read and construed as one with this Act.

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45 & 46 VICT., C. 39.

The Conveyancing Act, 1882.

(*Commencement of Act, 1st January,* 1883.)

Sec. 1.—Purchaser includes a lessee or mortgagee, or an intending mortgagee, or other person, who for valuable consideration takes or deals for property, and purchase has a meaning corresponding with that of purchaser.

Sec. 2.—Searches for judgments, deeds, or other matters, or documents, whereof entries are allowed or required to be made in the central office, may be made by an official, and certificate of result of search shall be conclusive in favor of a purchaser, and a solicitor obtaining an office copy of any such certificate shall not be answerable in respect of any loss that may arise from error in the certificate.

Sec. 3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge, or would have come to his knowledge, if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as

such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Separate Trustees.

Sec. 5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property, held on trusts distinct from those relating to any other part or parts of the trust property; or if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

Sec. 6.—(1.) A person to whom any power, whether coupled with an interest, or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power, and on such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power. This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Sec. 7.—(1.) In section 79 of the Fines and Recoveries Act, there shall, by virtue of this Act, be substituted for the words, "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual

commissioners," or "one special commissioner;" and in sec. 83 of the Fines and Recoveries Act there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England, or before a judge of a county court in England, or before a perpetual commissioner or a special commissioner shall not be impeached or impeachable by reason only that such judge or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment.

(4.) The enactments 3 and 4 William IV., c. 74, sec. 84, from and including the words "and the same judge" to the end of the section and sections 85 to 88 inclusive, and 17 and 18 Vict., c. 75, are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

Powers of Attorney.

Secs. 8 and 9.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the

power expressed to be irrevocable, or if whether given for valuable consideration or not it is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser the power shall not be revoked at any time, or during the fixed period as the case may be, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and any act done at any time, or during the fixed time as the case may be, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Sec. 10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if, and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Sec. 11.—Section 65 of the Conveyancing Act, of 1881, shall apply to, and include every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself being incapable of being enlarged into a fee simple.

Mortgages.

Sec. 12.—The right of the mortgagor, under section 15 of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to, and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Saving.

Sec. 13.—The repeal by this Act of any enactment, shall not affect any thing that has taken place before the commencement of this Act.

NOTES.—This Act no doubt introduces some improvements into our system of conveyancing. The provision of sec. 2 for official searches is perhaps, not very important, as in so many cases it is not thought necessary to make searches. Sec. 3 on restrictions on constructive notice is well worth attention. Secs. 8 and 9, rendering powers of attorney in certain cases absolutely irrevocable, are reasonable and proper provisions. Sec. 11 is an important limitation of the effect of sec. 65 of the Conveyancing Act 1881.

45 & 46 VICT., C. 75.

The Married Women's Property Act, 1882.

(*Commencement of Act*, 1*st January*, 1883.)

Sec. 22.—The Married Women's Property Acts, 1870 and 1874 (33 & 34 Vict., c. 93, and 37 & 38 Vict., c. 50) are repealed, but this not to effect anything done thereunder, or the rights, liabilities and positions of parties married before 1st January, 1883, under such Acts.

Sec. 1.—A married woman is to be capable of holding, and acquiring, and disposing of any property as her separate property, in the same manner as if she were a *feme sole*, and without the intervention of any trustee. She may contract in respect of her separate property, and sue and be sued as a *feme sole*, without her husband being joined; and any damages or costs recovered shall be her separate property, and any recovered against her shall be payable out of her separate property, and not otherwise. Every contract entered into by her shall be deemed to be in respect of, and to bind her separate property, unless the contrary be shown, and shall bind future acquired separate estate, as well as what she then has, and if carrying on a trade apart from her husband she shall, in respect of her separate property, be liable to the bankrupt laws.

Secs. 2, 5.—In marriages on or after 1st January, 1883, the woman's property which she is then possessed of, and all property which she acquires after marriage, shall be to her separate use, and this also shall be so in respect of property acquired on or after the 1st January, 1883, by a woman married before then.

Sec. 3.—With regard to any money or other estate lent by a woman to her husband, it shall, on his bankruptcy, be deemed his property, and he is only to have a right of

proving and receiving dividends after other creditors for value have been paid.

Sec. 4.—The execution of a general power of appointment by a married woman shall make the property appointed liable for her debts, &c., as if her separate estate.

Secs. 6 to 9.—All deposits in post office, and other banks, annuities, stocks, or funds, which on 1st January, 1883, are standing in a married woman's name, alone, or jointly with others, or which may on or after that date be so transferred, or standing, shall be deemed to be her separate property, with power for her to deal therewith apart from her husband and without his joining. This, however, shall not require or authorise any corporation or company to admit a married woman as holder of any stocks or shares.

Sec. 10.—If a woman fraudulently invests any moneys of her husband's in any annuity, stocks, &c., in her name, husband may apply summarily, under sec. 17 of this Act, for transfer thereof to him. Nothing in this Act is to apply to render good any disposition or gift by husband to wife, which would be bad as a fraud against creditors, nor to prevent any property being considered in husband's order and disposition.

Sec. 11.—A married woman may effect a policy on her own life or the life of her husband for her separate use. A man effecting a policy for the benefit of his wife and children, or either of them, and a woman effecting a policy for the benefit of her husband and children, or either of them, shall create a trust for them, and the proceeds of the policy shall not be subject to his or her debts, provided that if policy effected or premiums paid to defraud creditors they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the insurance

money, and in default of appointment, such policy shall vest in the insured, and his or her personal representatives in trust. If at the time of the death of the insured, there shall be no trustee, a trustee or trustees may be appointed by the Court under the provisions of the Trustees' Act, 1850 (13 & 14 Vict., c. 60), whose receipt shall be sufficient discharge to the insurance office.

Sec. 12.—A married woman whether married before or since 1st January, 1883, shall have all civil and criminal remedies in respect of her separate property, but beyond this no husband or wife shall be entitled to sue the other in respect of a tort. In any proceeding civil or criminal under this section, a husband or wife shall be competent to give evidence against each other. But no criminal proceeding shall be taken by wife against her husband under this Act, in respect of injuries done concerning her property, whilst they were living together, unless such property has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert his wife.

Secs. 13 to 15.—A wife shall remain liable for her ante-nuptial debts and liabilities whether on contract or tort, and the husband shall only be liable to the extent of any property which he has or acquires with or through his wife, after deducting all payments made thereout, in respect of her ante-nuptial debts. In respect of wife's ante-nuptial debts, husband and wife may be sued together or separately, but if it is not found that the husband has any such assets as aforesaid, then he is to have his costs of defence.

Sec. 16.—Wife doing anything with respect to any property of husband, which if done by husband with respect of property of wife, would make him liable to criminal proceedings by wife under this Act, shall in like manner be liable to criminal proceedings by husband.

Sec. 17.—Any questions of title or ownership arising between husband and wife, may be decided by summary

application to a judge of the High Court of Justice, or to the judge of the district county court, irrespective of the value of the property. The decision of any such judge is, however, to be subject to the ordinary rights of appeal. If the application is made in the county court, and it is in respect of property above the value of £500, the defendant may remove it into the High Court by certiorari, or as may be prescribed by rules of the High Court.

Secs. 18, 24.—A married woman, who is either alone, or with others, an executrix or administratrix, or trustee, may generally act and sue, or be sued without her husband, as if she were a *feme sole*, and her husband not to be liable in respect of the trust or administration unless he has acted or intermeddled therein.

Sec. 19.—Nothing in this Act is to interfere with provisions in any settlements, or to render inoperative any clause against anticipation; but such a clause contained in a settlement of a woman's own property not to have effect against her ante-nuptial debts, nor is any settlement by her, of her own property, to have any greater force or validity against her creditors than a like settlement by a man would have against his creditors.

Secs. 20, 21.—Married woman, having separate property, to be liable to the parish for the maintenance of her husband, her children, and her grandchildren.

Sec. 23.—For the purposes of this Act, the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities, and be subject to the same jurisdiction as she would be if she were living.

NOTES.—This statute, it will be seen, repeals the Married Women's Property Acts of 1870 and 1874, and deals, generally, with the subject of married women's rights, positions, and liabilities. Some of the alterations I may specially point out. The important recent case of Pike v. Fitzgibbon, (17 Ch. D., 454; 50 L. J., Ch. 394; 29 W. R., 551), decided that the engagements of a married woman would only

bind such separate estate as she was possessed of at the time of contracting the engagement—this is altered by sec. 1, sub-sec. 2. The case of *ex parte* Jones, in *re* Grissell, (12 Ch. D., 484 ; 48 L. J., Bk. 109), decided that a married woman could not be made a bankrupt even though possessed of separate estate—this is altered in the case of married women trading separately from their husbands. There is to be no limit as to the amount of property coming to a married woman which is to be to her separate estate, as with regard to women married on or after 1st January, 1883, all real and personal property which a woman is possessed of at marriage, or which devolves on her afterwards, is to be her separate property (secs. 2 and 5), and with regard to women married before the Act, this is also to be the case as to property devolving on them on or after 1st January, 1883. (See the former provision, 33 & 34 Vict., c. 93, secs. 7, 8.) Sec. 12 of the Act, gives a married woman civil and even criminal remedies, in some cases, against her husband in respect of his dealings with her property ; and, it enacts, that in any proceedings under the Act, husband and wife shall be competent to give evidence against each other. The husband has also like criminal remedies against his wife (sec. 16, and see amendment of this sec. by the Married Women's Property Act, 1884 (post, p 105). When a married woman has been appointed an executrix, the practical effect has always been that the whole duties and liabilities vest in the husband, and against his consent she can do nothing in the executorship except to continue it by her will. Sec. 18 alters this by giving her full power to act apart from her husband, and the husband is not to be liable in respect of the administration unless he has intermeddled therein. The most striking and important alteration which the Act makes is, no doubt, that contained in sec. 2, which I have already referred to, under which, when a man marries a woman, on or after 1st January, 1883, without any settlement on marriage, her whole property, which she is then possessed of, whether real or personal, and whether choses in possession or in action, remains vested in her as her separate property.

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46 & 47 VICT., C. 61.

The Agricultural Holdings (England) Act, 1883.

(*Commencement of Act*, 1*st January*, 1884.)

Secs. 54, 62.—This Act only applies to holdings either wholly agricultural or wholly pastoral, or in part agricul-

tural, and as to the residue pastoral, or in whole, or in part, cultivated as a market garden, and does not apply to any holding let to a tenant during his continuance in any office, appointment, or employment held under the landlord. The Agricultural Holdings' Act, 1875, and the amending Act of 1876, are, as regards the future, repealed.

Secs. 1-4.—Certain improvements are specified in the 1st schedule, and where a tenant has made on his holding any such improvement he is to be entitled to compensation therefor. As to certain of the improvements, the tenant is not to have compensation unless they have been made with landlord's consent. As to certain other improvements, the tenant is not to have compensation unless not more than three months and not less than two months before beginning them he has given notice, in writing, to the landlord of his intention to do them. Such a notice being given the landlord and tenant may agree as to the improvements, or the landlord may undertake to execute the improvements and may do the same, and charge the tenant with interest at £5 per cent. per annum on the outlay, or with such annual sum payable for a period of 25 years, as will repay the outlay with interest at the rate of £3 per cent. per annum, such annual sum to be recoverable as rent.

Sec. 7.—A tenant claiming compensation shall, two months at least before the determination of the tenancy, give notice, in writing, to the landlord, of his intention to make such claim, and the landlord may, before the determination of the tenancy, or within 14 days thereafter, give a counter-notice, in writing, to the tenant, of his intention to make a claim in respect of waste, or any breach of covenant, or other agreement.

Secs. 8—10, 23, 24.—Compensation may be the subject of agreement between the landlord and tenant, and if they do not agree it is to be settled by a reference as detailed in those sections. Where the compensation claimed exceed

£100, either party may, within seven days after delivery of the award, appeal against it to the District County Court, on any of the following grounds: (1) that award invalid; (2) that it proceeds upon an improper application of the provisions of the Act; (3) that compensation has been awarded in respect of matters for which the party was not entitled to compensation; (4) that compensation has not been awarded in respect of matters for which the party was entitled to compensation. The decision of the County Court judge is to be final, subject to a power to have a special case stated to the High Court on any point of law. If any compensation agreed, awarded, or ordered to be paid, is not paid within 14 days, it is to be recoverable on order made by the County Court judge, as money ordered by a County Court under its ordinary jurisdiction, to be paid, is recoverable.

Sec. 25.—Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court may appoint a guardian for the purposes of the Act.

Sec. 27.—The costs of proceedings in the County Court under this Act shall be in the discretion of the court.

Sec. 29.—A landlord paying compensation to his tenant, or expending any sum in respect of required improvements, shall be entitled to obtain from the District County Court a charge on the holding therefor. Capital money arising under the Settled Land Act, 1882, may be applied in this way.

Sec. 33.—Where a half-year's notice, expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the

holding, by writing under their hands, agree that this section shall not apply, in which case a half-year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

Sec. 34.—Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Provided as follows :—

1. Before the removal the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding.
2. In the removal the tenant shall not do any avoidable damage to any other building or other part of the holding.
3. Immediately after the removal the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal.
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of intention to remove it.
5. At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture

or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

Sec. 41.—A landlord may give notice to tenant to quit part only of demised land for certain purposes enumerated in this section—such as the erection of cottages, providing gardens for cottages, obtaining brick, earth, sand, &c., the making of roads, &c. The tenant is to have a proportionate reduction of rent to be settled by agreement or reference as in the case of compensation, but without appeal; and the tenant may, within 28 days of the service of the notice to quit, serve on the landlord a notice in writing to the effect that he accepts the notice as applying to the whole holding to take effect at the expiration of the then current year of the tenancy, and in that case the notice shall have effect accordingly.

Sec. 44.—Distress for rent only allowed to the extent of one year before the making of the distress, except that with regard to arrears at the time of the passing of Act (25th August, 1883), they may be distrained for up to the 1st January, 1885, as if Act had not passed. Where also the ordinary custom between landlord and tenant has been to defer payment of rent until the expiration of a quarter, or half-a-year, after the same became due, then, for the purpose of this section, the rent shall be deemed to have become due at the expiration of such quarter or half-year, and not at the date at which it legally became due.

Sec. 45.—Where live stock belonging to another person has been taken in by the tenant to be fed at a price agreed

to be paid for such feeding, such stock shall not be distrained where there is other sufficient distress to be found, and where there is no other sufficient distress, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or the amount thereof remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying the same to the distrainer.

Agricultural or other machinery which is the *bona fide* property of a person other than the tenant, and is on the premises of the tenant under a *bona fide* agreement with him for the hire or use thereof in the conduct of his business, and live stock of all kinds which is the *bona fide* property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrears.

Sec. 46.—Where any dispute arises in respect of or arising out of any distress contrary to the provisions of this Act, such dispute may be heard and determined by the District County Court, or by a Court of Summary Jurisdiction, and any such County Court or Court of Summary Jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires. An appeal is, however, allowed to the General or Quarter Sessions, in respect of any decision of a Court of Summary Jurisdiction.

Secs. 50, 51.—2 Wm. and Mary, c. 5, sec. 1, as to appraisement and sale at public auction repealed as to holdings, to which this Act relates, and in such holdings the period for replevying is extended to 15 days instead of five days, if the tenant or owner of the goods distrained make a request to that effect.

Sec. 52.—Any bailiff, to make any distress on a holding to which this Act applies, must be authorised to act as a bailiff by a certificate in writing under the hand of a judge of a County Court.

Sec. 55.—Any agreement by the tenant depriving himself of right to compensation under this Act to be void.

NOTES.—I have endeavoured to give the most prominent and important portions of this Act. It of course takes the place of the Acts of 1875 and 1876. With regard to the provisions of sec. 34 as to fixtures, the student should consider the whole subject in connection with Elwes v. Mawe. (Indermaur's Common Law Cases, 5th edition, p. 59.) Secs. 44 & 45, limiting the landlord's powers of distress, are very important, and in connection with the subject generally it will be well to consider Simpson v. Hartopp. (Indermaur's Common Law Cases, 8th edition, p. 33.)

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47 & 48 VICT., C. 14.

The Married Woman's Property Act, 1884.

(*Commencement of Act*, 23*rd June*, 1884.)

Sec. 1.—In any such criminal proceedings against a husband or a wife, as are authorised by the Married Woman's Property Act, 1882, the husband and wife respectively shall be competent and admissible witnesses, and except when defendant compellable to give evidence.

NOTE.—This Act was passed to put an end to the very curious anomaly under the Married Woman's Property Act, 1882, raised by the case of the Queen v. Brittleton and Bates (12 Q. B. D., 266; 53 L. J. M., C. 83). According to that case, whilst on a prosecution of the husband for any felonious dealing with the property of the wife, the latter could give evidence against him, on a prosecution of the wife for a like offence the husband could not give evidence against her.

47 & 48 VICT., C. 18.

The Settled Land Act, 1884.

(*Commencement of Act, 3rd July*, 1884.)

Sec. 3.—This Act is to be read and construed as one with the Settled Land Act, 1882.

Sec. 4.—A fine received on the grant of a lease under any power conferred by the Settled Land Act, 1882, is to be deemed capital money arising under that Act.

Sec. 5.—(1.) The notice required by sec. 45 of the Act of 1882, of intention to make a sale, exchange, partition, or lease, may be notice of a general intention.

(2.) On the request of the trustee, the tenant for life must furnish such particulars and information as may be reasonably required of him with reference to sales, exchanges, partitions, or leases effected or in progress, or immediately intended.

(3.) A trustee may, by writing, waive notice or accept less than a month's notice.

(4.) The section applies to a notice given before, as well as to a notice given after the Act.

(5.) But not to a notice, the sufficiency of which was objected to before the passing of the Act.

Sec. 6.—(1.) In the case of a settlement within the meaning of section 63 of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in the Act of 1882, to be deemed necessary to enable the trustees of the settlement, or any other person to execute any of the trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within the section 63 of the Act of 1882, if two or more persons constitute the tenant for life, then, notwithstanding anything contained in sub-section (2) of section 56 of the Act of 1882,

which requires the consent of all those persons, the consent of one only of those persons is to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power under the settlement for any purpose provided by the Act of 1882.

(3.) The section applies to dealings before as well as after the passing of the Act.

Sec. 7.—With respect to the powers conferred by section 63 of the Act of 1882, the following provisions are to take effect :—

(1.) Those powers are not to be exercised without the leave of the court.

(2.) The court may by order give leave to exercise all or any of those powers, and the order is to name the person or persons to whom the leave is given.

(3.) The court may from time to time rescind or vary any order or make any new order under this section.

(4.) So long as an order under this section is in force, neither the trustees of the settlement nor any person other than the person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave has been given.

(5.) An order under the section may be registered or re-registered as a *lis pendens* against the trustees of the settlement, describing them as "Trustees for the purposes of the Settled Land Act, 1882."

(6.) Any person dealing with the trustees is not to be affected by any order made under this section, unless registered and re-registered as a *lis pendens.*

(7.) An application to the court under this section may be made by the tenant for life, or by the persons who constitute the tenant for life.

(8.) An application to rescind or vary an order may also be made by the trustees of the settlement, or any person beneficially interested.

(9.) The person or persons to whom leave is given shall be deemed the proper person or persons to exercise the powers conferred by section 63 of the Act of 1883.

(10.) This section is not to affect any dealings which have taken place before the passing of the Act under any trust or power to which this section applies.

Sec. 8.—For the purposes of the Act of 1882, the estate of the tenant by the courtesy is to be deemed an estate arising under a settlement made by his wife.

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